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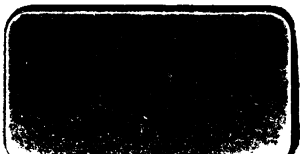
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THE
DUTIES, RIGHTS, AND LIABILITIES
OF
Justices of the Peace.



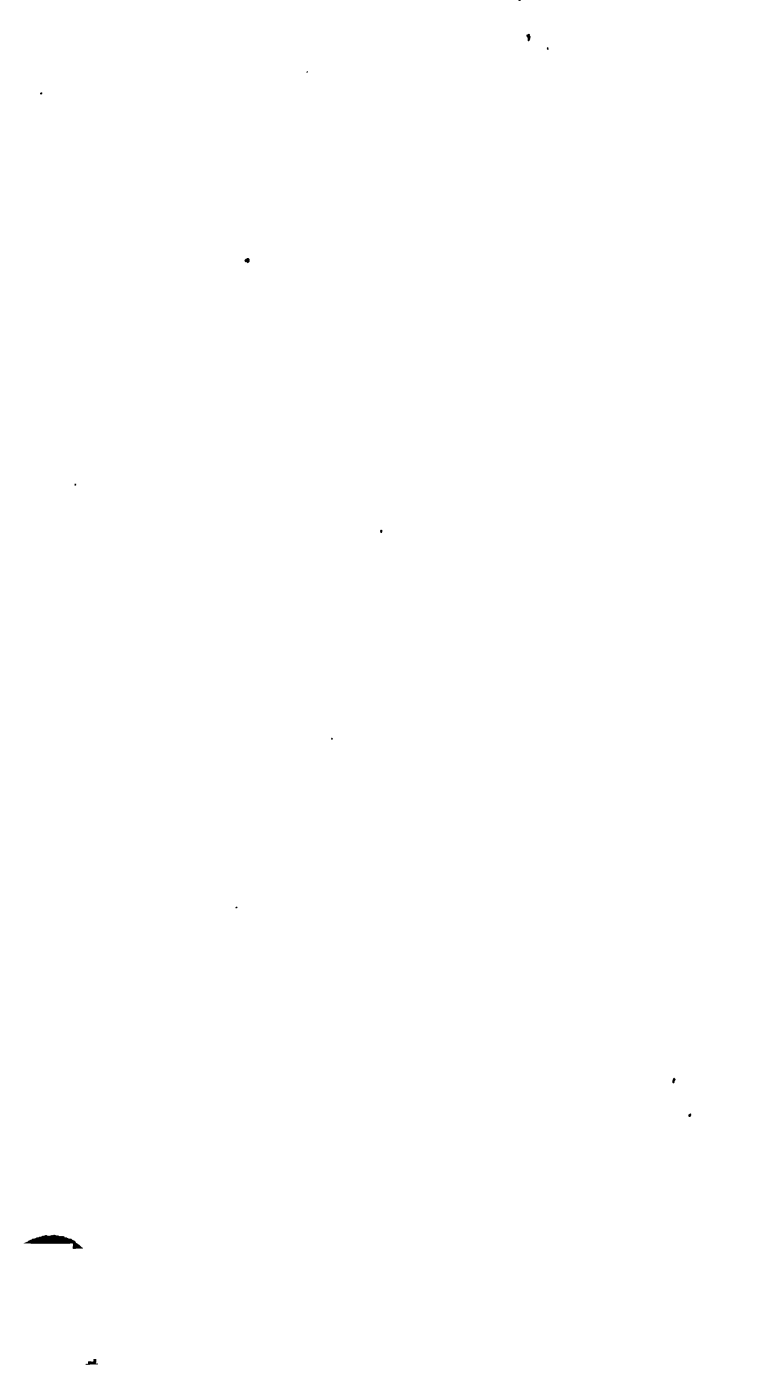
BY
THOMAS WILLIAM SAUNDERS, Esq.,
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1852.

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TO
DAVID JARDINE, ESQ.,
RECORDER OF BATH,
&c., &c., &c.,
THIS LITTLE WORK,
DESCRIPTIVE OF THOSE DUTIES HE HAS FOR SO LONG A PERIOD
DISCHARGED WITH SUCH CREDIT TO HIMSELF
AND
ADVANTAGE TO THE PUBLIC,
IS
(WITH HIS PERMISSION)
MOST RESPECTFULLY DEDICATED BY
HIS OBEDIENT SERVANT,
THE AUTHOR.



PREFACE.

THE purpose of the author in writing the following pages, descriptive of the duties, rights, and liabilities of justices of the peace, has been to supply a want much felt by this numerous and useful body of public functionaries.

Whilst books upon the law to be administered by magistrates are to be found in abundance, there is no work which purports carefully to describe and point out the practical method by which that law is to be dispensed; hence it has been conceived that a book which should devote itself to a familiar explanation of the *manner* and *mode* of performing the duties of the office, and should enter into the details of the practice of administering the law, would be deemed an acceptable acquisition to the legal library of the justice of the peace.

To accomplish this object no pains have been spared. Every ordinary duty of the justice has been described with a precision and an absence

from technicality, which it is hoped will greatly promote the acquisition of a knowledge of the subject.

To the young and inexperienced justice it is conceived these pages will be especially acceptable. To him a familiar and plain exposition of *how* he is to administer justice is of infinitely greater importance, and will more effectually assist him in the satisfactory discharge of his numerous duties, than even a profound knowledge of the law itself, if unaccompanied by such information.

Such being the design of the work, it has not been thought desirable to treat of those peculiar magisterial offices which are invariably filled by gentlemen of high legal attainments (such as the metropolitan police and stipendiary magistrateships), to whom instruction upon the matters here discussed would be altogether supererogatory.

T. W. S.

1, CLOISTERS, TEMPLE,
February, 1852.

CONTENTS.

CHAPTER I.	PAGE
Of the steps to be taken in order to become a justice of the peace - - - - -	1
CHAPTER II.	
Petty sessional division of counties; petty and special sessions - - - - -	5
CHAPTER III.	
The appointment of a clerk; his fees; legal acquirements of justices - - - - -	10
CHAPTER IV.	
Duties at petty and special sessions; how to act when interested in the subject, &c. - - -	17
CHAPTER V.	
Permitting parties to have the assistance of counsel or attorney - - - - -	22
CHAPTER VI.	
The proceedings of justices in reference to charges against individuals of indictable offences -	29
CHAPTER VII.	
Examinations; adjournments; prisoner's statement and defence - - - - -	38
CHAPTER VIII.	
Decision of justices as to discharging or committing for trial; immunity of justices; whether to commit to sessions or assizes - - -	44
CHAPTER VIII.*	
Admitting to bail; unwilling and refractory witnesses; committing for trial; money of prisoners; copy depositions; reading over and signing depositions; transmission of them to place of trial; certificate of expenses - -	50

CHAPTER IX.	PAGE
Their duties with respect to summary convictions; convictions under the Vagrant Act: (5 Geo. 4, c. 85.) - - - - -	63
CHAPTER X.	
Summary convictions; of matters preliminary to the hearing; information; summons or war- rant; appearance and non-appearance of the parties; appearance by counsel or attorney; open court; enforcing attendance of witnesses	68
CHAPTER XI.	
Hearing the case <i>ex parte</i> ; appearance of defen- dant; preliminary objections; proceeding upon the hearing; confessing and denying the charge; proceeding upon the defendant deny- ing the charge; ordering witnesses out of court; course of proceeding; evidence; who may address the bench; examination and cross- examination of witnesses - - -	74
CHAPTER XII.	
Conclusion of the case of the complainant; duties of justices thereupon; case of defendant ad- dressing the bench; duty of justices on the assertion of a claim of right; compromises and arrangements between the parties - -	81
CHAPTER XIII.	
The judgment; convicting defendant, judgment for defendant, &c. - - - -	92
CHAPTER XIV.	
Juvenile offenders, &c. - - - -	98
CHAPTER XV.	
Of certain miscellaneous duties of justices out of sessions; of sureties to keep the peace and be of good behaviour - - - -	104
CHAPTER XVI.	
Duties of justices under the Highway Act, &c. -	109
CHAPTER XVII.	
Of duties with reference to landlord and tenant -	118
CHAPTER XVIII.	
Their duties with reference to the administration of the poor laws - - - -	122

CHAPTER XIX.	PAGE
The duties of justices with reference to the preservation of the public peace; appointment, &c., of constables; special constables; calling in military aid; the Riot Act - - - -	130
CHAPTER XX.	
Granting search warrants; duties under the Mutiny Acts; granting licences; special sessions for passing highway surveyors' accounts and settling jury lists; powers to act <i>ex officio</i> -	136
CHAPTER XXI.	
Duties with reference to the quarter sessions; general and quarter sessions, nature of; where to be holden in boroughs; the place of holding; clerk of the peace; a court of record not an inferior court - - - - -	142
CHAPTER XXII.	
Rules and orders of sessions; day of the week of holding sessions; the chairman; opening sessions; grand jury; charging them; dividing the sessions; business of the first day; committees; their appointment; their duties; reports; duration; vacancies in; presenting reports; proceedings thereupon; appointing county officers; motions - - - -	148
CHAPTER XXIII.	
Proceedings upon the trial of indictments -	157
CHAPTER XXIV.	
Their duties in reference to appeals - - -	169
CHAPTER XXV.	
The writ of <i>mandamus</i> - - - - -	175
CHAPTER XXVI.	
The writs of <i>certiorari</i> and <i>habeas corpus</i> - -	181
CHAPTER XXVII.	
Of actions against justices - - - -	188
CHAPTER XXVIII.	
Of criminal informations - - - -	201
Monthly list of business to be done by justices - -	205
Criminal jurisdiction of the quarter sessions - -	208
Parliamentary return of the number of justices - -	210
Index - - - - -	217

TABLE OF CASES.

	PAGE		PAGE
Attwood v. Joliffe.....	189	Reg. or Rex v. Cox	203
Barton v. Bricknell	194	— Cozens	202
Brittain v. Kinnaird.....	182, 188	— Crowhurst	42
Caudle v. Seymour	32	— Dodson	85
Cave v. Mountaine	182, 189	— Evans	71
Chandler v. Horn.....	77	— Faderman	159
Chaney v. Payne	185	— Glamorganshire (Justices of)	173
Charter v. Greame	185	— Hertfordshire (Justices of)	21
Cooke v. Nethercote.....	77	— Jackson	203
Dale v. Pollard.....	85	— James	58
Dunn v. Packwood	79	— Jones	71
Fletcher, <i>ex parte</i>	61	— Kiddy	36
Hopwood, <i>ex parte</i>	71	— London (Lord Mayor of)	61
Humphreys, <i>ex parte</i>	61	— Newton	76
Hyde, <i>ex parte</i>	94	— O'Donnell	60
Jones v. Owen	122	— Owen	100
Kier v. Leeman	89, 90, 91	— Palmer	203
Leary v. Patrick	192	— Pinney	135
Lindsay v. Greame	189	— Price	79
Linford v. Fitzroy	52	— Salter	76
Mayhew v. Lock	58	— Sansome	41
Ratt v. Parkinson	197	— Smith	42, 148
Reg. or Rex v. Badger 52, 109, 203		— Williams	203
— Barton	94	— Wrottesley	84
— Bolton	177, 182, 189	Sellwood v. Mount	185
— Borrow	203	Stones v. Byron	78
— Brown.....	130	Tordoft, <i>re</i>	189
— Cambridgeshire(Justices of)	113	Young v. Pitts	202
— Cavanagh	65	Williams, <i>ex parte</i>	71
— Cheltenham Commissioners	21		

TABLE OF STATUTES.



	PAGE
1 Geo. 1, stat. 2, c. 5	134
5 Geo. 2, c. 19	184
11 Geo. 2, c. 19	122
_____ s. 16	119
13 Geo. 2, c. 18, s. 5	183
18 Geo. 2, c. 21, s. 1	3
43 Geo. 3, c. 141, s. 1	190
45 Geo. 3, c. 48, s. 3	140
52 Geo. 3, c. 95, s. 31	141
53 Geo. 3, c. 127, s. 7	84
57 Geo. 3, c. 52	120
_____ c. 93	132
59 Geo. 3, c. 28	152
3 Geo. 4, c. 126	118
5 Geo. 4, c. 83	64
6 Geo. 4, c. 50	140
7 & 8 Geo. 4, c. 17	132
_____ c. 29, s. 63 ...	136
_____ c. 30, s. 24 ...	85
_____ c. 75, s. 1	140
9 Geo. 4, c. 43	6
9 & 10 Geo. 4, c. 61	138
1 Will. 4, c. 70, s. 35	143
1 & 2 Will. 4, c. 32	138
_____ c. 41	131
3 & 4 Will. 4, c. 95	140
4 & 5 Will. 4, c. 47	144
5 & 6 Will. 4, c. 50	109
_____ s. 45 ...	110
_____ s. 58 ...	111
_____ s. 84 ...	111
_____ s. 85 ...	112
_____ c. 76, s. 98 ...	3
_____ s. 100 ...	8
_____ s. 101 ...	3
_____ s. 105 ...	144

	PAGE
6 Will. 4, c. 12	6
6 & 7 Will. 4, c. 96, s. 6	128
_____ s. 7	129
7 Will. 4 & 1 Vict. c. 91	134
1 & 2 Vict. c. 74	120
4 & 5 Vict. c. 50	117
5 & 6 Vict. c. 109	131
6 & 7 Vict. c. 68	139
7 & 8 Vict. c. 101	5
8 & 9 Vict. c. 109	139
9 & 10 Vict. c. 95, s. 122 ...	122
10 & 11 Vict. c. 82 ...	98, 100, 102
11 & 12 Vict. c. 31	126
_____ c. 42, s. 1	30
_____ s. 4	8
_____ s. 8	31
_____ s. 9, 10,	
12	32, 33
_____ s. 17...37,	43
_____ s. 18	40
_____ s. 19...23,	34
_____ s. 20	57
_____ s. 21...34,	39
_____ s. 23...50,	53
_____ s. 25...44,	58
_____ s. 26	58
_____ s. 27	61
_____ c. 43, s. 1	69
_____ s. 7	73
_____ s. 12 23,	73
_____ s. 13...70,	72
_____ s. 14...82,	93
_____ s. 29	69
_____ s. 30	13
_____ c. 44, s. 1	189
_____ s. 2	191

	PAGE		PAGE
11 & 12 Vict. c. 44, s. 5	180	12 Vict. c. 18, s. 2	7
_____ s. 8	199	12 & 13 Vict. c. 45, s. 7,	
_____ s. 9	200	_____ 185, 186	
_____ s. 10	200	13 Vict. c. 37	98, 101, 103
_____ s. 11	200	14 & 15 Vict. c. 14, s. 4	96
_____ s. 12	200	_____ c. 55, s. 9	147
_____ s. 13	200	_____ ss. 9, 10,	
_____ s. 14	201	11, 12	13, 14, 15
_____ c. 78	168	_____ c. 100, s. 19 ...	97

ERRATA AND ADDENDA.



Page 4.—After the words “the peace,” in line 14, *add*, “or in boroughs having a separate commission of the peace, to the clerk to the justices.”

Page 75.—At line 23 from the top, *for* “11 & 12 Vict. c. 42” *read* “11 & 12 Vict. c. 43.”

Page 94.—Last line, *after* “*Ex parte Hyde*, 20 L. J., M. C.,” *add*, “overruled by *Reg. v. Hyde*, 18 Law Times, 223.”

THE
DUTIES, RIGHTS AND LIABILITIES
OF
Justices of the Peace.

CHAPTER I.

OF THE STEPS TO BE TAKEN IN ORDER TO
BECOME A JUSTICE OF THE PEACE.

THE office of a justice of the peace, yielding as it does to none, in the variety and social importance of its functions, established and in active operation alike amongst the busiest haunts of the population, and in the remotest parts of the kingdom, filled with no view to personal profit or worldly advantage by gentlemen selected for their position in life, their characters and acquirements, daily and hourly brought to bear with integrity, zeal, and ability upon the most important concerns of life, demands as it should uniformly receive, the utmost respect and consideration. Instituted at a remote period of our history, such has been the inherent excellence

and utility of the office, that the increased intelligence of the nation, and the advanced state of civilization have combined to invest it with additional influence and power. That such should be the case, and with an office filled too by gentlemen, who by education are generally strangers to the science of the law, speaks volumes in behalf of that institution which thus not only has survived the social and political revolutions of ages, but with the improved intelligence of the present day finds additional favour and respect.

Without, however, pursuing this subject further than to express a belief that the great utility of the office and its popularity are founded in the national characteristic of a love of fair dealing between man and man, and in the spirit of liberality and honour which has ever been the attribute of the gentry of this country, we will proceed to consider practically those duties and functions which are the essential elements of the office itself, in doing which we shall seek rather to explain in a familiar and untechnical way those practical modes of action and methods of dealing with the various duties of the office, than to go deeply into the law itself which has to be administered; esteeming it more desirable to lay down practical rules of action which the justice will himself have to pursue, than to direct his attention to those multitudinous branches of the law which he will ever have supplied him as occasion shall require, by that functionary, his clerk, whose advice and recommendation, at all times when doubt or difficulty arises, he should not hesitate to follow.

Nowwithstanding the majority of the readers of these pages have gone through the process, and therefore have no further individual interest in the steps necessary to be taken in order to become a justice of the peace, it will not

be inappropriate here to describe shortly that process.

The qualification varies according as the party is to be a county or a borough justice. If the former, he must by the 18 Geo. 2, c. 20, s. 1, have in law or equity to and for his own use and benefit in possession, a freehold, copyhold or customary estate for life, or for some greater estate, or an estate for some long term of years determinable upon one or more life or lives, or for a certain term originally created for twenty-one years or more, in lands, tenements, or hereditaments, lying or being in England or Wales, of the clear yearly value of 100*l.*, over and above what will discharge all incumbrances, and above all rents and charges payable out of it; or he must be seised of or entitled to, in law or equity, to and for his own use and benefit, the immediate reversion or remainder of and in lands, tenements, or hereditaments, lying or being as aforesaid, which are leased for one, two or three lives, or for any term of years determinable upon the death of one, two or three lives, upon reserved rents, and which are of the clear value of 300*l.* The qualification.

A penalty of 100*l.* is imposed for acting without such qualification. There is, however, an exception made in the above and other statutes in favour of certain descriptions of persons in whose cases no pecuniary qualification is requisite.

Borough justices appointed for corporate towns under the Municipal Corporations Act (5 & 6 Will. 4, c. 76), are not required to possess any pecuniary qualification, sect. 101 of that act expressly dispensing with such qualification, but recognising all other grounds of disqualification. It is, however, by sect. 98, enacted, that every person assigned to act as a justice in such boroughs shall reside within the borough for

which he shall be so assigned, or within seven miles of it, or of some part of it, during such time as he shall act as a justice of the peace in and for such borough.

How
appointed.

The appointment of private individuals in all cases is directly by the Crown, through the Lord Chancellor; in counties usually upon the recommendation of the Lord Lieutenant, or other influential parties; and in municipal boroughs at the instance of persons upon whose judgment the Government for the day relies; or the Lord Chancellor of his own motion makes the appointment. When made, it is signified to the clerk of the peace, who communicates the fact to the gentlemen nominated. This proceeding does not of course apply to those justices who become such by virtue of their offices, such as the mayors and recorders of boroughs, judges of the County Courts, &c.

Upon receiving a notification of his appointment, the justice should, if he is desirous of taking upon himself the duties of his office, communicate to the clerk of the peace his readiness to qualify, and authorize him to take the necessary steps for the purpose, and request to be informed of the time and place at which to attend. It is unnecessary here to refer minutely to the various oaths or forms which the justice has to go through, they are few and simple in themselves, and will be communicated to him by the clerk of the peace, whose fees he will have to pay at the time. It will, however, be proper to mention, that as he will have to specify in his oath of qualification the nature of his property, he should be prepared with an accurate description of its nature and locality.

Having complied with these preliminary conditions, and affixed his signature to the different documents, the newly-made justice becomes entitled to take upon himself the numerous duties

imposed upon him by the various acts of Parliament, and the commission of the peace; amongst the more important of which, in former times, he will still find noted down that of inquiring into *all and all manner of enchantments, sorceries, arts, magic ! &c.*

CHAPTER II.

PETTY SESSIONAL DIVISIONS OF COUNTIES.— PETTY AND SPECIAL SESSIONS.

ALTHOUGH the powers of a justice of the peace are co-extensive with the limits of the county or riding for which he is appointed, yet as it would be found extremely inconvenient to him and to the respective suitors to be called upon to administer justice or appear at remote parts, a practice has long since sprung up which has been recognised and enforced by the Legislature, of dividing the counties into petty sessional divisions, wherein the justices dwelling within such divisions alone transact the business arising within such localities as may properly be brought under their cognizance and jurisdiction. In many cases, indeed, the Legislature has provided that the justices of a certain division shall alone have authority to deal with particular matters arising within the limits of that division, as under the 7 & 8 Vict. c. 101, wherein it is provided that an application for an order of affiliation must be made to the justices of the division wherein the woman resides at the time of the application, and in which and in similar cases, no other justices but those of that division have any functions to interfere.

Divisions of
counties.

There are at present two statutes regulating the divisions of counties for the purposes of the administration of justice by justices of the peace, the first of which is the 9 Geo. 4, c. 43, which provides for the mode of forming and giving effect to the division; and the second, the 6 Will. 4, c. 12, which points out the method of altering such divisions as occasion requires. Each act, however, renders it a condition to the formation of a division, that there shall be five justices residing or usually acting within the boundary-line of such division.

Place of
meeting for
the transac-
tion of
business.

The place at which the justices meet for the transaction of such business in the division as is within their jurisdiction, is entirely in their own discretion. They, however, usually fix upon some central spot, and upon some building there, well known and of a commodious nature, the same place being, for reasons sufficiently obvious, always continued for the purpose. In the selection of this place the justices are unrestricted, but it will readily occur to every intelligent mind that whilst some premises are peculiarly well adapted for the purpose of holding magisterial meetings, others are altogether ill-suited, and should be avoided. Thus, should there be any town-hall or other public building in a convenient situation within the division, such a place would undoubtedly be one of all others to be preferred, whilst it would be highly desirable, if possible, to avoid meeting at an inn or tavern, or other place where an encouragement may be given to intemperance or disorderly conduct. In large towns no difficulty can well occur in the selection of a proper place, but in rural districts it is certainly often next to impossible to obtain a commodious location, unless it be at some inn or tavern. Useful, however, as are the public inns of this country when used for their original and legitimate purposes, no one

who wishes well to the humbler classes of this kingdom would desire to see them drawn to such places for any purposes not necessarily connected with the original objects for which they were licensed. When men are kept hanging about an inn, perhaps for hours together, until their business is brought on, the temptation to indulge in the liquors which are there vended often becomes too strong to be resisted, and not only is intemperance thus encouraged, but the presence of justice itself is often insulted by the appearance of parties in a state of inebriation. In many cases, no doubt, it is wholly impossible to select a place commanding the necessary accommodation unless it be a tavern, but so highly objectionable in a moral point of view is the administering of justice in such a house, that no consideration of expense or inconvenience ought for one instant to weigh in the matter. Indeed, when recently this question came incidentally under the attention of the Legislature, it was proposed to insert a clause in the Petty Session Act forbidding the holding of petty sessions in such a place ; but whilst the evil was fully admitted on all hands, it was thought better to leave the subject to the good sense of the magistracy than to interfere by positive enactment. The statute, however, of the 12 Vict. c. 18, intituled *An Act for the holding of Petty Sessions of the Peace in Boroughs, and for providing Places for the holding of such Petty Sessions in Counties and Boroughs,* enacts in sect. 2, "that in all cases where at present there are not, or where hereafter there shall not be, any fit or proper place for the holding of such petty sessions within any such petty sessional division as aforesaid, it shall be lawful for the justices of the peace for any such county, riding, &c., in general or quarter sessions assembled, if they shall think fit to direct from time to time that fit

and proper places be hired or otherwise provided for the holding of such petty sessions of the peace, within any such petty sessional division, and that the expenses thereof and attendant thereon be paid out of the county rate." This section then proceeds to provide for the making of the application to the quarter sessions for the purpose of obtaining their assent, and proceeds to enact that in any case where it is so required to provide a fit and proper place as aforesaid, if it shall appear to the justices (at quarter sessions) that the County Court for the district is holden in any building or place which would be appropriate for the holding of such petty sessions, it shall be lawful for such justices to contract with the treasurer of such County Court for the use and occupation thereof, or of so much thereof as may be needed for the purposes of such petty sessions, for such time or times, weekly or otherwise, and at such annual rent and subject to such conditions as to repairs, alterations or improvements of such building or place, as may be agreed upon. The foregoing section applies equally to justices of the peace in corporate boroughs: the town council being substituted for the quarter sessions; and it should here be mentioned that by the 5 & 6 Will. 4, c. 76 (the Municipal Corporations Act), s. 100, it is enacted that the council of every borough to which a separate commission of the peace shall be granted under the provisions of the act, shall be authorized and required to provide and furnish a suitable office or offices for the purpose of transacting the business of the justices of the peace of such borough, but that no room in any house licensed as a victualling house or alehouse shall be used for the purposes of any such police office.

Petty
sessions.

In every division the justices arrange to meet at certain ascertained times to transact the busi-

ness which awaits their decisions, and these meetings are denominated "petty sessions." The occasions upon which they take place are regulated by the justices themselves, according to the wants and necessities of the locality; thus, in some districts these meetings are held every day, whilst in others it is not found necessary to meet more than once or twice a week, and in all cases the number of justices assembling is immaterial, one justice being, in point of law, as capable of deciding upon any question as a dozen, except where some legislative enactment requires that any given case shall be adjudicated upon by two or more, in which case the legislative provision in this particular must be strictly complied with. It must not, however, from the foregoing observations, be supposed that it is only at such an appointed time and place that it is competent for a justice to act, for although it will be prudent for him, as far as convenient, to act in concert with his brother magistrates and at the petty sessions, yet in many cases it will be proper for him not to admit of the delay attendant upon such a meeting, but to act at once, particularly in cases of charges of indictable offences, on which it may be highly desirable that the party should be either at once committed for trial or discharged out of custody.

Special sessions are those particular meetings of the justices of a division, held in pursuance of some particular act of Parliament, for the transaction of some special business, such as for licensing ale-houses and dealers in game, settling jury lists, hearing applications under the Highway Act, for hearing appeals against parish rates, &c., and in respect of these sessions it is necessary (except where it is expressly dispensed with by statute), that a notice should be duly given to each justice in the division of the time and place of the sessions, and of

the particular matter to be transacted. The number of the sessions, and occasionally the exact time for holding them, is often provided for by the act of Parliament directing such sessions to be held.

The proper duties of the justices, both at petty and special sessions, will hereafter be considered. It may not, however, be inappropriate here to enforce upon justices the policy of taking advantage of the beneficial enactment of the 12 Vict. c. 18, which we have before quoted, relative to the providing of proper places for the holding of petty and special sessions, since it is of the highest importance that those multitudinous and important duties, which are constantly devolving upon them, should not only be executed with dignity and judgment, but that the place wherein those duties are performed should be in keeping and in character with the importance of the occasion. Sound and impartial justice may undoubtedly be administered in a public-house, but it will unquestionably lose much of its importance in the estimation of the general public by its association with scenes of intemperance and revelry.

CHAPTER III.

THE APPOINTMENT OF A CLERK—HIS FEES.— LEGAL ACQUIREMENTS OF JUSTICES.

THE first step necessary to be taken by justices acting in any division of a county is that of choosing a clerk. With the multitudinous and varying duties imposed upon the magistrates of this country, it would be utterly impossible for them to act with advantage to the public or safety to themselves, without the assistance of

some professional gentleman whose legal education has qualified him to undertake the office of adviser, and to whom they can look for advice when matters of difficulty may arise; indeed, such is the technical nature of many of the duties of justices, that, without such a functionary, no bench of magistrates could go on for a single day together. The Legislature, perceiving the necessity for the assistance of such a party, has made provision for his remuneration, and thus a body of fees has been established out of which the clerk derives his emoluments, and which is the only source from which he is directly paid for his services.

The appointment of clerk to the justices is entirely within the discretion of the justices themselves; it rests with themselves alone, and the clerk holds his office at their pleasure, having no freehold interest in it, and being entitled to no compensation upon removal. The clerk will, of course, be selected from that body of professional gentlemen denominated attorneys; and, properly, from some one of them practising in the neighbourhood. As he will have numerous and important functions to perform, arising directly out of the office itself, and not merely as adviser to the justices, and as the magistrates will usually refer to him upon questions of law and practice, looking to him for advice upon all matters of difficulty, and relying upon him to save them harmless from all legal consequences of the steps they may take under his recommendation, it behoves them to exercise a sound and mature discretion in the appointment they make to this office. Indeed, considering the wide range of subjects coming under their cognizance—the important interests frequently involved—the subtle points of law and nice questions of fact occasionally arising, and the serious consequences to themselves in acting

Appointment
of clerk to
the justices.

Appoint-
ment of
clerk.

without or exceeding their jurisdiction, too much care cannot well be exercised in the selection of a gentlemen from whom so much will be expected, and upon whom so much will devolve.

The office of clerk to the justices being one of no little honour in itself, and, from its bringing the party who fills it into immediate and friendly connexion with the justices and other gentry of the division, one of some influence, it is, independently of the consideration of the remuneration arising directly out of it, and the indirect advantage from the position it confers upon a member of the profession of an attorney, much desired by even those in its highest walks. No embarrassment, therefore, will at any time arise from a want of candidates; the difficulty will consist in knowing whom to choose as most fitting to fill so responsible a situation, since, in addition to a competent knowledge of the various branches of magistrates' law, and an aptitude for business, it will be right that the clerk should occupy a position in the locality which ensures for him not only the respect of his professional brethren, with whom he will be much brought into contact, but the confidence of the general public, in whose disputes and complaints he will necessarily, to a great extent, be the arbitrator. Combined, therefore, with legal attainments and business-like habits, the gentleman selected as clerk should have a high standing in his profession, and be possessed of those personal qualities likely to ensure and command the respect of all classes of the community amongst whom his services may be required. With such a functionary at all times near them when advice is requisite, the justices will find their duties easy of execution, and their office one in no way beset with anxieties or fears.

It will at once be comprehended how important a matter is that of the selection of a

competent clerk. Relying, as the justices must, in almost every important step they may take upon the learning and practical knowledge of this functionary, no one should be selected in whom they cannot place the most ample confidence, or who will not be looked upon by the suitors themselves with respect and esteem.

The appointment being made, the justices may well leave the mere machinery of their business entirely to their clerk ; if he properly comprehend his duties, he will know when and where to call the justices together, what business to lay before them, and how to assist them in all proper ways in its transaction. These duties, as being peculiarly within the province of the clerk, need not be more particularly referred to here ; suffice it to say, that in all matters of importance in which any question of law or practice is involved, the justice, if at all in doubt, should seek the advice and recommendation of his clerk, and unless that advice be in open opposition to his own views (in which case he should obtain a higher opinion), he should act upon it without hesitation.

The remuneration of the clerk to the justices takes place through the medium of certain fees to which he is entitled in respect of the various matters in which his services are required, or in accordance with the 14 & 15 Vict. c. 55, ss. 9, 10, he may be paid by a fixed salary, or by fees and a fixed salary. These fees for the most part are paid by the suitors—never by the justices, and are well ascertained. The 11 & 12 Vict. c. 43, s. 30, provides a mode for the future regulation or alteration of these fees, as occasion may require.

Fees to the clerk.

By the recent statute (the 14 & 15 Vict. c. 55) powers are given to justices and others to provide for the payment of the clerk to the justices by a fixed salary in lieu of fees. The 9th section of that statute enacts :

14 & 15 Vict.
c. 55, s. 9.

That it shall be lawful for the justices of the peace at their general or quarter sessions, &c., notice being given at the preceding quarter sessions that a motion will be made for such purpose, and the council or other governing body in any borough in England and Wales from time to time, if they see fit so to do, to recommend to one of Her Majesty's principal Secretaries of State that the clerk of the peace, the clerk of special and petty sessions, and the clerks of the justices of the peace within their several jurisdictions, or any of such clerks as aforesaid be paid by salaries in lieu of fees and other payments, or where any such clerks are for the time being paid by salaries by virtue of any order made under this act, or otherwise, to recommend that the amounts of all or any of the salaries for the time being payable be reconsidered, or that all or any of such clerks for the time being paid by salaries be paid by fees in lieu of salary, and where payment by salary in lieu of fees, or the reconsideration of the amounts of any salaries is recommended, to state the amount of salary which in the opinion of such justices, council, or governing body should in each case be paid, and every such recommendation being signed by the chairman of the court of general or quarter sessions, or the mayor or other head officer of the borough shall be transmitted to the Secretary of State; and it shall be lawful for such Secretary of State, when any such recommendation is so made to him, by order under his hand, if he so think fit, to direct that all or any of the clerks, to which such recommendation refers, be paid by salary, and to fix the amount of salary to be so paid, or vary the amount of salary for the time being payable to any such clerk, or to direct that any such clerk for the time being paid by salary be paid by fees in lieu of salary; and such Secretary of State shall cause copies of every order made under this enactment affecting any clerk of the peace or any clerks of special sessions, or petty sessions, or clerks to the justices within the district of any clerk of the peace to be transmitted to such clerk of the peace, to be by him distributed where occasion shall require to such other clerks as aforesaid; and the salary for the time being payable to any such clerk under any such order shall be paid out of any county rate, or rate in the nature of a county rate: provided, also, that no order shall be made in pursuance of any recommendation of the council, or governing body of any borough, in relation to the mode of payment or the amount of salary of any such clerk other than the clerk of the peace for such borough, unless the justices of such borough, at a meeting of such justices, approve of such recommendation, and such approval be certified to such Secretary of State under the hand of the chairman of such meeting.

Section 10 then provides that certain descriptions of business may be excepted out of the

salary. Section 11 directs that where a clerk is paid by salary in lieu of fees, the latter are to be paid to the county treasurer, in aid of the county rate, or, in a borough, to the treasurer, in aid of the borough fund, and the clerk is duly to account for them. Fees to the clerk.

The act then, by section 12, enacts, that where a clerk is thus paid by salary, any justice or justices before whom any proceedings is had wherein a fee is payable, which should be accounted for by the clerk, may remit such fee in whole or in part, for poverty, or other reasonable cause, in their or his discretion, making an entry of all such fees remitted, with the cause thereof.

Before the passing of this statute, it was to be regretted that there were no means of remunerating the clerk to the justices by a fixed salary, instead of fees ; much inconvenience and detriment to the cause of justice often arose out of the system ; magistrates frequently found themselves fettered in their decisions by the necessity of exacting the clerk's fees, and they were often compelled to visit parties with a pecuniary infliction because they could not, in justice to their clerk, deprive him of his remuneration. In paying this functionary by a fixed salary, the hands of the justices are left unfettered ; the justices have a power to excuse, in fitting cases, the payment of fees ; the odium which often attaches personally to the clerk for demanding that which, after all, is fairly his due, is removed ; his remuneration is paid upon a more satisfactory and certain basis, and the administration of justice by magistrates is freed of a system which is daily becoming more obnoxious in public opinion. It is to be hoped that powers so wisely bestowed upon justices will not be suffered to remain dormant and unexercised.

Study of the
law by
justices.

Although the justices will do well in all cases of doubt involving any question of law or practice, to seek the advice of their clerk and act upon it, no magistrate should be so little informed upon the law which he is called upon to administer, as to be entirely dependent upon this functionary for assistance; nor can such assistance as he may receive from this quarter be in any way an excuse for his not storing his mind with at least the ordinary principles of law, and the rules of evidence. No gentleman ought for an instant to think of acting as a justice of the peace, who has not furnished his mind to a certain extent with a fair share of legal learning. To be entirely dependent upon his clerk for legal information, is to be a mere automaton—an impediment in the way of the administration of justice, rather than otherwise, and we can easily conceive how perfectly embarrassing and distressing must be the position of such a magistrate, when sitting to adjudicate in the presence of litigant parties, who are assisted by their counsel or attorneys. In such a case, although with the aid of his clerk, he will, no doubt, arrive at a just conclusion, yet that ignorance of the ordinary principles of law or the rules of evidence, which at almost every moment will drive him to his clerk for information, will expose him to the deteriorating criticisms of the suitors, and will infinitely detract from the influence and importance of his judgments. The magistrate who desires to realize the full influence and utility of his office, will have prepared himself by some amount of legal study, for the post which he occupies. With the rules of evidence more especially, he should be familiar, since, notwithstanding he has his clerk to refer to, it is the function of the justice alone to regulate the course of proceeding in any given case, and to keep in order and to

the point, the litigant parties who are before him ; without, therefore, a general knowledge of the rules of law and evidence, it is morally impossible that a justice can preside at the hearing of a case with either satisfaction to himself or to the suitors ; without such a knowledge, no regularity of proceeding is at all likely to be observed (unless, indeed, the clerk usurps a function which does not properly belong to him, and becomes himself the magistrate), and the justice loses that which of all things it is necessary he should obtain, namely, the confidence and respect of the suitors. We would, therefore, strongly counsel justices, before entering upon the active duties of their office, to consult and render themselves familiar with some of those useful works devoted to the explanation of our criminal and parish law, and the subjects generally brought under the cognizance of magistrates, and amongst others we may refer to Russell on Crimes, Burn's Justice, and the three recent acts for the administration of justice by justices of the peace, namely, the 11 & 12 Vict. cc. 42, 43, and 44, wherein an immense body of necessary and practical information will be found collected.

CHAPTER IV.

DUTIES AT PETTY AND SPECIAL SESSIONS. HOW TO ACT WHEN INTERESTED IN THE SUBJECT ; STRICT IMPARTIALITY, &c.

THERE are comparatively few duties which appertain to the office of a justice of the peace which he is not called upon to perform, either as a member of the Court of Quarter Sessions or

as a magistrate sitting in petty or special sessions. Occasionally it occurs that in his individual and ministerial capacity, a justice is required to back warrants of apprehension, to take declarations or administer oaths, to grant summonses, suppress riots, and perform other special duties pointed out by particular acts of Parliament; but these duties, for the most part, simple in themselves and readily comprehended, it will be unnecessary more particularly now to refer to, since they will be found circumstantially defined in those various enactments to which, on an occasion arising for their performance, reference should be made. With these general remarks we will at present proceed to consider somewhat in detail the duties of justices as they are to be performed in petty and special sessions.

Duties of
justices in
petty or
special
sessions.

Under this head we purpose, for the convenience of arrangement, including all the functions which a justice either *must* or *may* perform at a petty or special sessions; for although there are many duties, such as the taking of depositions prior to a committal for trial, which need not be performed at a petty sessions, yet as the rules governing the procedure of a justice will apply alike whether he act in concert with others or entirely alone, no useful purpose will be accomplished by making a distinction which the subject does not necessarily require.

We have before pointed out the difference which exists between a petty and a special sessions, and the peculiar features of each; and as these distinctions apply rather to the purposes for which these sessions are held, and the mode by which they are brought into existence, than the form of proceeding during their progress, the two descriptions of procedure will be treated as in all respects the same, unless some special reference be made to denote that the one is referred to and not the other. It will be con-

venient at this time to point out those general rules which justices should ever bear in mind when performing or about to perform those important functions with which the Legislature has clothed them.

Good feeling as well as the express decisions of our Superior Courts, at once point out the propriety and necessity of every justice abstaining from taking part in any proceeding in which he has a personal interest. Strict impartiality should be the first and most conspicuous attribute of the administration of justice. If the decision of a judge is to be held in respect, if it is to carry weight and authority, and receive the acquiescence of the parties whom it is to affect, and be looked upon by all others as deserving of their approval, it must proceed alone from those who are known to have no personal motive for swerving from an impartial course. That any magistrate would from a personal motive wilfully misjudge a cause, and acquit where he ought to convict, or convict where he should acquit, is not to be supposed; but no man, even though he may fill the responsible office of an administrator of the law, can be expected to be entirely free from bias when his own interests are at stake; and even though no such malversation of office as that to which we have referred can be suspected, it may not be unreasonably surmised that a justice interested in the result, may look upon the supposed offence with a sterner eye than one not interested, and in pronouncing judgment may give effect to his feelings by awarding a higher fine or a greater measure of punishment than the offence may fairly warrant. To guard against any taint of this kind a justice should most scrupulously abstain from interfering in any case in which the result, either the one way or the other, may affect his interests; and it would even be well if in such

Not to interfere if interested in the result.

Justices
interested.

a case he were not himself to be personally present. By the word "*interest*" we mean not merely *pecuniary* interest, for indeed the cases will rarely arise in which any pecuniary benefit can result directly or even indirectly to a complainant, but that interest which a man may be supposed to take in a proceeding which affects his property, relatives, servants or connexions ; such as may be involved in applications on the part of tenants for licences to property of which he is the landlord, or information against such tenants ; proceedings against his relatives, or against his servants under the Master and Servants Acts, and other kinds of matters which will readily suggest themselves. In such and a variety of other cases, particularly those under the game laws, where the justice is the owner of the property, the propriety of declining to interfere will be at once apparent.

There is, however, a line to be drawn in cases in which an interest is supposed to exist, and it must not be imagined that a justice should refrain from assisting in the administration of the law merely because he has a very remote and indirect interest in the subject-matter under consideration ; but the interest which is to influence in restraining him, is to be such as would be likely to operate to some appreciable extent in biasing that judgment which he should bring to bear upon the matter free and unfettered. Many acts of Parliament have expressly given to justices jurisdiction to adjudicate in certain cases, notwithstanding the interest which they may be supposed to have in the result. In such cases the magistrate so interested will of course not hesitate to perform his regular functions. So also, where the litigant parties themselves express a wish that he should take upon himself the duty of hearing and deciding upon the case, he will do well not to decline acting. The

subject of the legal impropriety of magistrates in interfering in cases in which they are interested is much considered in *Reg. v. The Cheltenham Commissioners* (1 Q. B. 467), and *Reg. v. The Justices of Hertfordshire* (1 New Sess. Cas. 470; 14 Law J., M. C., 73; 6 Q. B. 753.)

As a bench of magistrates, when sitting to adjudicate summarily, are in the situation of a jury, it is of course of essential importance that they should keep their minds free from any strong impression which may lead them to anticipate the result of the impending investigation. Sitting as justices ordinarily do, to administer justice within a small locality where they are likely to hear many, and frequently incorrect or highly coloured versions of what they may have themselves to decide upon, and being placed in the position not only of a jury to decide upon facts, but in that also of judges to award the penalty, they are particularly open to receive impressions tending to warp their judgments, and to influences affecting their decisions. In a locality limited in itself, where party or personal enmity may run high, and where some question fomented by political or sectarian feeling may be brought before a bench of magistrates, consisting possibly of only two justices, much, very much care is requisite to avoid being influenced in coming to a decision by some of those considerations which do not strictly and legitimately arise out of the case itself, but which attach more to the individual as a member of society generally than to his conduct in the particular case in question. In saying this, it is not to be gathered that it is believed that justices will lend themselves to accomplish unfair or sinister purposes, but when the great powers with which they are armed, and the wide discretion with which they are invested are taken into account, and it is remem-

To know
nothing of a
case before
the hearing.

bered how necessarily great is the latitude of proceeding before them, and with what ease their ear can be assailed by parties interested in creating a false impression, it is not too much to say that they are peculiarly open to be imposed upon by statements and appearances which, unless they exercise the most extreme vigilance and caution, may probably lead to results which may not be in strict keeping with the intrinsic merits of the case before them.

There is only one safe course for a justice to pursue with the view of avoiding all chance of being influenced by partial or overcoloured statements in reference to proceedings about to be instituted before him, and that is to avoid, upon all occasions except when sitting in judgment, all conversations upon the topics to be discussed, and scrupulously to turn a deaf ear to every attempt which may be made from any quarter to engage his attention by any statement of facts ; in short, as far as possible, to know nothing of the facts of any case, or the pretensions or condition of any of the parties interested in it, save as may transpire upon the hearing, and to judge of the facts as they then transpire, and form a judgment from them at that time, and from them alone.

CHAPTER V.

PERMITTING PARTIES TO HAVE THE ASSISTANCE OF COUNSEL OR ATTORNEY.

When parties can have the assistance of counsel or **In many cases in which justices are called upon to act in their judicial capacity, they will find that the parties interested in the inquiry are**

desirous of availing themselves of legal professional assistance, and it will be well therefore for the bench to act upon some general principle upon the subject. In some classes of cases the Legislature has declared that the litigant parties shall have a *right* to be heard by counsel or attorney, whilst in others a discretion has been given to the justices to permit or refuse such assistance. attorney as
of right, and
when it is
discretionary

By sect. 12 of the 11 & 12 Vict. c. 43, *An Act to facilitate the Performance of the Duties of Justices of the Peace, out of Sessions, within England and Wales, with respect to Summary Convictions and Orders*, it is expressly enacted, that—

The party against whom such complaint is made, or information laid, shall be permitted to make his full answer and defence thereto, and to have the witnesses examined and cross-examined by counsel or attorney in his behalf; and every complainant or informant in any such case shall be at liberty to conduct such complaint or information respectively, and to have the witnesses examined and cross-examined by counsel or attorney on his behalf.

In all cases of summary convictions or orders, therefore, the complainant and defendant have an absolute right to be heard by counsel or attorney, regulated, however, by the practice as prescribed by the 14th section of the same enactment, and the justices have no discretion upon the subject, but are bound to hear the counsel or attorney, if the party complaining or defending desires his services.

In all other classes of cases the justices may exercise a discretion as to whether or not they will permit the parties to avail themselves of legal assistance. In the 11 & 12 Vict. c. 42, *An Act to facilitate the Performance of the Duties of Justices of the Peace, out of Sessions, within England and Wales, with respect to Persons charged with Indictable Offences*, there is a clause (sect. 19) which declares that the

Presence of
counsel or
attorney.

room or building in which the justices shall take the examinations shall not be deemed an open court for that purpose, and that it shall be lawful for them, in their discretion, to order that no person shall have access to, or be or remain in, such room or building without the consent or permission of such justices, if it appear to them that the ends of justice will be best answered by so doing. But in a prior clause (sect. 17), provision is made for the reception in evidence of the deposition taken by the committing justice, if the witness be dead, or too ill to travel, provided that such deposition was taken in the presence of the person accused, and that he or his counsel or attorney had a full opportunity of cross-examining the witness. Now, although the Legislature has conferred no absolute right upon an accused party to the assistance, before the committing justices, of counsel or attorney, it is abundantly clear—from the reference made in the 17th section to counsel or attorney, and the power contained in the 19th section to exclude all parties from the justice-room, *if it appear to the justices that the ends of justice will be best answered by so doing*—that it was supposed by the authors of this statute that such assistance would never be refused to an accused party, except in the instance pointed out at the end of the 17th section.

It is difficult to conceive any possible case in which the ends of public justice can really be best answered by refusing an accused party the assistance of a legal adviser. As the law now stands, the depositions of the witnesses may, in the instances before mentioned, be given in evidence upon the trial; the importance, therefore, to the accused, of being enabled to cross-examine through the agency of a legal adviser, is as obvious as it is great. Common justice declares that at a time of such peril as that of the

examining of the witnesses by the committing justices, the accused party ought not to be deprived of legal professional assistance. There is really only one argument of any weight that can be advanced in opposition to the permission suggested, and that is to be found in the possibility of the professional adviser taking advantage of what may have transpired in the justice-room, to warn others not yet in custody, or otherwise to defeat the ultimate ends of justice. This argument, however, becomes puerile in the extreme when it is remembered that counsel and attorneys, as members of an honourable profession, and directly amenable, in cases of professional obliquity, to the all-powerful censure of the Superior Courts, would scarcely lend themselves to a proceeding which must necessarily result in their disgrace and ruin. But, whether or not the interests of the public might be endangered, the sacred cause of justice to an accused should over-ride every other consideration; and, indeed, it may well be questioned if justice to the public can ever be promoted by doing injustice to any one of its members. In practice, we believe a request on the part of an accused party to be permitted the assistance of a professional adviser is rarely refused; and in the police courts of the metropolis an application of this kind is uniformly conceded. What has here been advanced will apply with equal force to the permission of interviews by an attorney with the accused, before the hearing, or pending a remand. To permit an attorney to appear and cross-examine on behalf of a party charged, would be, in many cases, of little avail, unless the suspected criminal were permitted to instruct his attorney as to the facts of the case, and the course of examination to be pursued. And it is worthy of remark, that in the corresponding statute for

Counsel and
attorneys.

Counsel and
attorneys.

Ireland, which passed in the following year (12 & 13 Vict. c. 68), the 19th section, whilst in all other respects it is similar to the 19th section of the English act, expressly reserves the right of the counsel or attorney of any person then being in such court as a prisoner to be present; clearly showing that the omission of any such right in the English act was by accident, and not from design, since there can be no reason for conferring this principle upon Ireland, and withholding it from England.

There is another class of cases in which also it is discretionary with the justices to permit the parties interested to be heard by counsel or attorney, namely, where applications are made to them for licenses under the very numerous acts of Parliament requiring the permission of the magistrates to enable persons to pursue certain occupations, or open their houses for particular purposes, such as for alehouse, theatrical, and musical licenses; for permission to keep a house for slaughtering cattle, or billiard playing, &c. In applications such as these, the interests of individuals and of the public may occasionally be deeply concerned, and very great injustice may at times be done, and much mischief be sanctioned, either by refusing or granting the licences requested. Very grave considerations are frequently involved in an application of the foregoing character, and many nice questions of public and private policy may arise even in the apparently simple matter of granting an alehouse licence. Such a licence, for instance, might be applied for in respect of a house situated in a locality where it would be ruinous to the adjacent property, or by a class of persons already in some other pursuit in life, whom to permit to open their houses as public houses, in addition to their regular trades, would be productive of the worst consequences. The discretion

Counsel and
attorneys.

with which justices are clothed in granting or refusing these licences, clearly indicates the intention of the Legislature that deliberation and circumspection should be resorted to before complying with applications of this kind; and the provision uniformly inserted in acts of Parliament for the giving of public notice, prior to the making of the application, is evidently for the purpose of enabling the public to come in at the proper time and oppose the grant. As these applications are always made to the discretion of the bench, the great question, as far as it concerns the point now under consideration, is, whether or not that discretion is more likely to be wisely exercised after hearing what can be said by legal men on either side, than without such hearing? If the justices feel satisfied that the view they at the moment have taken of the subject is so full, comprehensive, and technically and legally correct, that no facts or arguments can possibly be addressed to them which can throw any additional light or information upon the matter, and that the judgment which by their own unaided minds they have formed upon a subject involving probably many nice considerations is infallible, they will probably think the listening to reasons from the lips of professional advocates who have taken the trouble to probe the subject in all directions, an unnecessary consumption of their time; but if they feel that they themselves have not had the opportunity or personal motives for taking such a view of the subject, as to assure them that they may not have omitted some particulars of an essential kind: if they reflect that it is only when legal minds (prompted by the interest which a professional motive communicates to them) are brought to bear fully upon a question connected with the administration of the law that such a question is comprehensively dealt with: if they believe that their own views

Counsel and
attorneys.

of the subject, however full, may yet derive a vigour or a polish from those of the trained and educated lawyer : if, lastly, they would desire to put themselves in the best possible position to form a sound judgment, and to give the greatest amount of satisfaction to the public at large, and to the individuals in particular who are seeking their decision, they will readily assent to the hearing of the parties through the medium of either their counsel or attorneys.

We have dwelt somewhat lengthily upon this topic, from the knowledge we possess of the disinclination of many benches of magistrates to permit professional gentlemen to address them in cases where they have a discretion to prevent their so doing, and from a strong conviction that such a disinclination when carried into practice, redounds greatly to the prejudice of that justice which it should be their most anxious care to administer with as much wisdom as they can infuse into it. We know full well that the contentions of legal professional advisers often lead to much personal wrangling, and sometimes involve the subject-matter in considerable mystery and doubt. The first of these drawbacks, however, is easily corrected and avoided by the proper exercise of that authority which is vested in the justices to preserve and enforce regularity, order, and decorum ; and the second can never obstruct the ultimate decision of the case, unless, indeed, the mystery and doubt be inherent in the case itself, in which event its development is useful and desirable. But in the vast majority of cases, the bench will find a valuable fund of useful information, in the discussions of opponent professional gentlemen, from which to gather materials wherewith to frame or enforce that judgment which they may feel themselves called upon to pronounce. There never can arise any real mischief to the best interests of justice by hearing

what can be urged for or against any given proposition by legal professional gentlemen, whilst justice may frequently be but feebly and indifferently, if not inefficiently, administered by a refusal to hear the arguments of those whose education, habits of thought, and personal investigation have fitted them to extract the pith and essence of the matter in contention. If there be justices who, mistrusting their own judgments and the powers of their minds, seize upon the sound and reject the unsound proposition : if there are those amongst the magistracy who have so little confidence in themselves that they are apprehensive of being led away by arguments which are sophistical and hollow, such gentlemen should carefully avoid being placed in a position for which their mental qualities have unsuited them, and should not seek to officiate in a capacity requiring considerable acuteness of intellect, and strength and firmness of understanding.

CHAPTER VI.

THE PROCEEDINGS OF JUSTICES IN REFERENCE TO CHARGES AGAINST INDIVIDUALS OF INDICTABLE OFFENCES.

THE two principal classes of functions which out of sessions the justices will be called upon to perform, are those in connexion with the hearing of criminal charges, with a view to a committal for trial, and the hearing of complaints to be adjudicated upon by way of summary conviction. To these duties we shall, in the first instance, direct attention, reserving for a future consideration matters of a more special and exceptive character. First, then, of the hearing of criminal charges with a view to a committal for trial.

The mode of bringing the accused before the justice.

There are three modes by which a party charged with an indictable offence may be brought before the committing justice: 1st. By summons. 2nd. By warrant. 3rd. By arrest without warrant. The latter mode is that adopted when any felony is committed in the presence of others who are at all times authorized to apprehend the offender, or where a charge of felony is made by a third party to a peace officer, who thereupon exercises his legal function of arresting the party accused. When, in this way, the offender is captured, he will be brought before the justice for examination at the proper time and place. The two former modes, by summons or warrant, are adopted as the justice may think that one of the two is, under the circumstances, more desirable than the other; the 11 & 12 Vict. c. 42, *An Act to facilitate the Performance of the Duties of Justices of the Peace out of Sessions within England and Wales, with respect to persons charged with Indictable Offences*, which ought to be carefully consulted in the proceedings under this head, giving the justice an option, by sect. 1, as to which of the two processes he will use.

Summons and warrant.

By the 1st section of the foregoing act, *a summons or warrant* may issue in the first instance in all cases where a charge or complaint shall be made before one or more justice or justices, that any person has committed, or is suspected to have committed, *any treason, felony, or indictable misdemeanour, or other indictable offence whatsoever*, within the limits of the jurisdiction of such justice; so, too, a summons or warrant may in like manner issue where any person who is suspected to have committed any such offence out of his jurisdiction, is nevertheless residing, or being, or suspected to be, within such jurisdiction.

Before, however, issuing either a summons or a warrant, a charge or complaint must be made:

(sect. 1.) When a summons only is to issue, Summons and warrant. this charge or complaint need not be in writing, though it is quite competent for the justice to require it to be both in writing and upon oath ; but in every case in which, in the first instance, a warrant is to issue, the charge or complaint *must* be in writing and *upon oath or affirmation* : (sect. 18, form A.)

The 11 & 12 Vict. c. 42, supplies an ample body of forms for the use of justices acting under that statute, which regulates a considerable portion of the practice in the cases to which attention is now being directed, and which it will be well for justices to refer to and to adopt. In the instance, therefore, of a charge of an indictable offence being preferred against a party, the justice will take the information according to the form (A.) set out in the schedule to the act. If the charge is *orally* taken, not upon oath, a short statement of the case will be made by the prosecutor or some one who knows the facts. If, however, the justice thinks it necessary to have it in writing, or a warrant is to issue, then it should be taken according to the form prescribed, and upon oath : (sect. 8.)

As regards the granting of a summons, it may be observed that a practice has somewhat generally obtained of justices signing a number of summonses in blank, to be filled up by their clerk as occasion may require, and as the issuing of a summons is more a ministerial than a judicial act, and it may be highly inconvenient to all parties, and peril, in some cases, the ends of justice to incur the delay, sometimes unavoidable, in procuring the actual presence of a justice to take the complaint—such a practice is little open to censure, on the score of its tending to prejudice the course of justice; but as the Legislature has specifically required the actual signature of the justice to the summons, and has

Summons
and warrant.

rendered the issuing of such summons dependent upon a charge or complaint being made before him (sects. 1 and 9), there being also no provision in the act enabling him to delegate his powers to another, it would seem that the only strictly correct practice is for the justice himself, in every case, to take the charge or information, and thereupon to exercise his own discretion as to whether or not he will issue his summons. Where a warrant is to issue in the first instance, it is imperatively necessary that the information should be taken in the presence of the justice who grants it, otherwise consequences of the most serious nature may result: (*Caudle v. Seymour*, 1 Q. B. 889.) In either case *one* justice only may receive the charge, and grant the summons or warrant.

The form and contents of both the summons and warrant are fully provided for by sects. 9 and 12, and forms B. and C. When granted, the summons is to be served as directed by sect. 9, by a constable or other peace officer; the warrant also is to be executed by some constable, peace officer, or other specified person, as pointed out by sect. 10. This, however, being a matter peculiarly for the attention of the clerk to the justices and the peace officers respectively, need not further be entered into.

When an indictment has been found against a party not already committed upon the charge, the duty of the justice is somewhat peculiar. Upon the production to him of the certificate of the clerk of the indictments, or clerk of the peace, of the indictment having been found, he (the justice) is to issue his warrant (form G.) to apprehend the party indicted, and to cause him to be brought before him, and upon his apprehension, and its being proved upon oath or affirmation that he is the same person, he is, without further examination, to commit him to

trial, or admit him to bail. And if the person so indicted is confined in any gaol for any other offence than that charged in the indictment, the justice, upon like proof of identity, is to issue his warrant (form I.) to the gaoler to detain him until, by a writ of *habeas corpus*, he shall be removed for the purpose of being tried, or be otherwise removed or discharged by due course of law.

By sect. 4 of the foregoing enactment, a justice may issue his *warrant* as before mentioned, or any search warrant, *on a Sunday*, as well as on any other day. This, however, will not authorize the issuing of a *summons* on that day.

Upon the day appointed for the appearance of the accused, if he have only been summoned and he do not appear, the justice should inquire as to the particulars of the service, and should it transpire that the defendant has not been served either personally, or by the summons being left with some person for him at his last or most usual place of abode, the justice should either issue a fresh summons or grant a warrant of apprehension, taking care, however, in the latter case, that a charge should be taken in writing, and upon oath : (sect. 9.) If, however, the defendant has been served in either of the ways pointed out, but do not attend, and no satisfactory reason be given for his nonattendance, the justice may, upon being satisfied of the fact of service by examining the constable, issue his warrant of apprehension, and in this case *without* any previous charge in writing, or on oath.

Proceedings
upon the
appearance
or non-
appearance
of the parties.

If no one appear on behalf of the prosecution, nor any satisfactory reason be given for the non-attendance, the justice should discharge the prisoner: if, however, a valid reason be given for the absence, and a postponement be requested,

the justice will exercise his discretion, and either remand or discharge the prisoner, as he may think advisable and proper; and if he remand the accused, it may be either to custody, or upon his own recognizances, or that of himself and one or more sureties. If the remand be for a time not exceeding three days, it may be given verbally to the constable, but if for a longer period (which, however, must not exceed eight clear days), it must be by warrant. This remand, however, may be made from time to time, as occasion may require: (sect. 21.)

Excluding
the public.

Supposing both prosecutor and defendant to be present, and no sufficient reason is raised for a postponement, it will be the duty of the justice to enter at once upon the hearing; but before doing so, two or three preliminary questions may arise touching the course of proceedings which it will be necessary to determine. First, as to the admission or exclusion of strangers. Upon inquiries of this nature, the justices have a general power to exclude parties from being present. By sect. 19 of the 11 & 12 Vict. c. 42 (*Administration of Justice Act*, No. 1), it is declared, "that the room or building in which such justice or justices shall take such examinations and statements as aforesaid, shall not be deemed an open court for that purpose; and it shall be lawful for such justice or justices, in his or their discretion, to order that no person shall have access to, or be or remain in, such room or building without the consent or permission of such justice or justices, if it appear to him or them that the ends of justice will be best answered by so doing." As this section makes no reservation in favour of any parties, it will extend to the exclusion of the professional adviser of the accused; it is, however, difficult to conceive a case in which the ends of justice can be best answered by depriving an accused party of the

assistance of a legal adviser. Having before (*ante*, p. 22,) considered the propriety of permitting parties to have the assistance of counsel or attorney, it will be unnecessary further to consider it in this place.

Another preliminary which sometimes arises is, that of ordering the witnesses out of court. A request of this nature is often made on the part of the accused, and when so made, should always be complied with; indeed, it would be a wholesome practice generally to admit one witness at a time into the presence of the justices whilst the examinations are being taken. The utility to the cause of truth, upon the trial of causes or indictments, of having the witnesses out of court, so that no cue should be given to them, nor any hints conveyed from what they hear as to what they are to say, is every day experienced and appreciated; and if this be so upon the trials themselves, it is not less so upon these preliminary inquiries, when evidence is given which, through death or illness, may be the only evidence afterwards received upon the trial, and when it is considered that, whether true or false, when once sworn to, the witness will not be afterwards likely to depart from what he has said.

Ordering
witnesses out
of court.

If all the preliminary matters be settled, the justice will proceed to hear the evidence in support of the charge. Upon all occasions of this sort some one, either the prosecutor or a constable, or other person at whose instance the proceedings are taken, will state the substance of the case, and call the witnesses in the order in which it is most convenient their evidence should be taken; but before each witness deposes to any fact, it is essential that he should be sworn according to the proper form appropriate to the occasion and the witness, or that he should affirm, in cases in which his affirmation may be

The mode of
taking the
examina-
tions.

Mode of
taking ex-
aminations.

taken, as where the witness is a Quaker, Moravian, or Separatist. Even before the 11 & 12 Vict. c. 42, which by sect. 17 renders it imperative in the justices, before any witness shall be examined, to administer to such witness the usual oath or affirmation, it was decided by the Queen's Bench to be an improper proceeding to take the examination first, and then to swear the witness. Abbott, C. J., in *R. v. Kiddy* (4 Dowl. & Ry. 734), saying, "magistrates should understand that the oath is to be administered to the witness before he is examined and not afterwards;" and Bailey, J., in the same case, remarking, "The answer of the witness is to be taken under the sanction of an oath: swearing him after his examination is taken is a very incorrect mode of proceeding, and it is hoped will be discontinued."

The oath or affirmation will be tendered by the justices' clerk.

It may here be mentioned that in some localities, with the view of marshalling the witnesses, and getting their testimony into exact and regular order, a practice exists of going through the evidence before some subordinate officer, prior to the examination before the justices. Such a practice cannot be too strongly censured. True it is that, by such a proceeding, the examination afterwards before the justices may be facilitated, and a complicated case be put into a proper shape and form; but it is open to the objection of being unsanctioned by the obligation of an oath, and being behind the back of the accused; and, being taken by an irresponsible and often interested party, liable to abuse and to lead to the apprehension of the witnesses having been tampered with. Justice to the public and to the accused demands that the evidence, as given before the justices, should be pure and uncontaminated: that there should be no re-

hearsal beforehand of the evidence which is to be given at the hearing: that the witnesses when before the magistrates should deliver their evidence unadulterated and genuine as from the original fountain of truth, and not qualified or even made more perfect by any hint, correction, or explanation which may, in the way we have suggested, have been given. If the case be involved in doubt or mystery, the justices should themselves endeavour to solve it, and if discrepancies or inaccuracies are apparent, the accused ought to have the benefit of them. However much, therefore, such a preliminary examination may assist in the development of the truth, and render the after-examination before the justices the more easy and comprehensible, it ought carefully to be discountenanced as tending to results of a most vicious and mischievous description.

Mode of
taking ex-
aminations.

Each witness, after being sworn, should be required to tell all that he knows concerning the matter in question, but if there be any one present who knows the facts, or has been instructed as to them,—as the attorney for the prosecution, or a police constable,—he may, with propriety, be permitted to put such questions to the witness as will elicit the facts, the justices, however, keeping a watchful guard that such questions be relevant and put in a legal form, and, above all, that they be not leading ones. The evidence of the witness should be written down by the clerk as it is given, and as nearly as possible in the very words of the witness, and in the actual presence and hearing of the prisoner, who should be permitted to take notes of their evidence.

The accused has a right to cross-examine any and all of the witnesses produced against him (sect. 17) in as full and complete a manner as he may think necessary; and it will be the duty of the justice to cause his clerk to take down such cross-examinations upon the same papers

Cross-
examination.

as those containing the examinations in chief, distinguishing properly between the two kinds of examination. There is certainly no express provision that such cross-examination shall be reduced to writing, but inasmuch as sect. 17 says, that the witnesses shall be examined in the presence of the accused, "who shall be at liberty to put questions to any witness produced against him," and as the concluding portion of the same section provides for the giving of the examination in evidence in certain cases, if it be proved that the deposition was taken in the presence of the person so accused, and that he or his counsel or attorney had a full opportunity of cross-examining the witness, it is clear that it was the intention of the Legislature that the cross-examination should be reduced to writing, and be returned, together with the depositions, to the sessions or assizes. Indeed, the power to cross-examine would be futile, unless such cross-examination were to be recorded for future use. If the examination itself is to be evidence in certain cases, so ought the cross-examination, which may modify or explain it. Of course the justice will exercise a sound discretion in reference to the cross-examination, and permit neither irrelevant questions to be asked, or their answers to incumber the depositions.

CHAPTER VII.

EXAMINATIONS—ADJOURNMENTS—PRISONER'S STATEMENT AND DEFENCE.

WHEN the prosecutor has produced all the evidence which at the time he is enabled to bring forward in support of the charge, he will, if he desire time to adduce further evidence, apply

for an adjournment, which, if the justices think the ends of justice require it, they will readily grant, taking care, however, that as short an interval take place as may be necessary; and thus, from time to time, without restriction, if the necessities of the case should require it, the justices may adjourn, in order that any necessary additional evidence may be procured to substantiate the charge, being mindful, however, that as the liberty of the accused is thereby restrained, they countenance no merely vexatious delays, and that they have the power to admit him to bail pending such adjournments. Upon this subject the justices have sect. 21 of the 11 & 12 Vict. c. 42, for their guide, whereby they are empowered to defer the examination, or further examination of the witnesses, from time to time, if, from the absence of witnesses, or other reasonable cause, such a course shall become necessary or advisable, and remand the accused for such time as they shall deem reasonable, not exceeding eight clear days, to the common gaol or house of correction, or other prison, lock-up house, or place of security within their limits for which they are then acting; and if the remand is for a time not exceeding three clear days, the remand may be by a verbal order to the constable, &c., in whose custody the defendant is: or he may be ordered to keep him in his custody, and to bring him up at the time appointed: or he may be brought up before the expiration of such time by order of the justices: or he may be discharged upon his entering into his own recognizance, with or without a surety or sureties, conditioned to appear at the time and place appointed.

The case for the prosecution being concluded, the justices will pause to consider whether or not any *primâ facie* case has been made out; if the evidence has utterly failed to connect the

The prisoner's statement or defence.

Prisoner's
statement or
defence.

accused with the crime charged, they will, of course, proceed no further, but order him to be forthwith discharged; if, however, the evidence is found to press against the prisoner, even though slightly, it will be proper for them to take the next step, and proceed, as directed by sect. 18 of the before-mentioned statute, which directs that after the examination of all the witnesses on the part of the prosecution shall have been completed, the justices are, without requiring the attendance of the witnesses, to read, or cause to be read to the accused, the depositions taken against him, and shall say to him these words, or words to the like effect :—

Having heard the evidence, do you wish to say anything in answer to the charge? You are not obliged to say anything unless you desire to do so, but whatever you say will be taken down in writing, and may be given in evidence against you upon your trial.

The section then proceeds to direct, that,

Whatever the prisoner shall then say in answer thereto shall be taken down in writing and read over to him, and shall be signed by the said justice or justices, and kept with the depositions of the witnesses, and shall be transmitted with them as hereinafter mentioned; and afterwards, upon the trial of the said accused person, the same may, if necessary, be given in evidence against him, without further proof thereof, unless it shall be proved that the justice or justices purporting to sign the same did not in fact sign the same: provided always, that the said justice or justices, before such accused person shall make any statement, shall state to him, and give him clearly to understand, that he has nothing to hope from any promise of favour, and nothing to fear from any threat which may have been holden out to him to induce him to make any admission or confession of his guilt, but that whatever he shall then say may be given in evidence against him upon his trial, notwithstanding such promise or threat: provided, nevertheless, that nothing herein enacted or contained, shall prevent the prosecutor in any case from giving in evidence any admission or confession, or other statement of the person accused or charged, made at any time, which by law would be admissible as evidence against such person.

We have given the foregoing section somewhat

at length, from its great practical importance, and the difficulties which exist in reconciling some of its provisions with each other. It will be seen that the justices are required to give two cautions : the first of which is contained in the early part of the section ending with the words, "and may be given in evidence against you upon your trial;" and the section then proceeds as thus : "and whatever the prisoner shall then say in answer thereto, shall be taken down in writing," &c., leading to the supposition, justified by the form N. given in the schedule, that the justices are there to stop, and then to hear what the prisoner has to say in answer. But, upon looking further, there is another caution to be made use of contained in the first proviso, to the effect that, before the accused shall make any statement, the justice shall state to him that any promise or threat which may have been made or holden out, will be of no avail, &c.

Prisoner's
statement or
defence.

It is now settled that notwithstanding the caution contained in the proviso has not been given, the prisoner's statement may be properly received in evidence, such caution being applicable only to cases in which some previous threat or promise has in fact been used: (*Reg. v. Sansome*, 19 L. J. 143, M. C. ; 1 Den. C. C. 545; 4 Cox's Crim. Cas. 203; 4 New Sess. Cas. 152.) But inasmuch as it may not at the time of the investigation before the justices transpire that any such threat or promise has been used, although in truth it has, as at the trial may afterwards appear, it will, to avoid all possible chance of difficulty upon this head, be advisable for them to blend the two cautions together, and set out, in the form N. returned, the fact that such double caution was duly given. Acting upon this suggestion, the form of caution may be this:—"Having heard the evidence, do you wish to say anything in answer to the charge? You

are not obliged to say anything unless you desire to do so, but whatever you say will be taken down in writing, and may be given in evidence against you upon your trial; and I give you clearly to understand that you have nothing to hope from any promise of favour, and nothing to fear from any threat which may have been holden out to you, to induce you to make any admission or confession of guilt, but whatever you shall now say may be given in evidence against you upon your trial, notwithstanding such promise or threat."

Upon this, the justices' clerk will carefully take down everything which the prisoner may say in answer, relevant to the subject, in the exact words, if possible, in which the answer is given.

Evidence
for the
prisoner.

It will often occur that the accused is anxious to substantiate his innocence by calling witnesses, and, although the justices may feel that no evidence which he may adduce will warrant them in abstaining from sending the case for trial, it will, nevertheless, be their duty to hear it, inasmuch as it may be of importance to the accused, in the event of his witnesses dying before trial, that their evidence should be recorded, and may the better enable the justices to form a proper judgment as to whether or not the party may safely be admitted to bail, leaving entirely out of view the possibility of such evidence entirely exonerating the accused from the crime imputed to him. Somewhat in point upon this subject, is the dictum of Lord Denman in *Reg. v. Smith* (2 Car. & Kir. 207), wherein his lordship, referring to the previous case of *Reg. v. Crowhurst* (1 Car. & Kir. 370), said, "I quite agree with the case of *Reg. v. Crowhurst*, which is very correctly reported. It was mentioned to me by Baron Alderson, at the time when it occurred. *If a person in*

whose possession stolen property is found, give a reasonable account of how he came by it, and refer to some known person as the person from whom he received it, the magistrates should send for that person and examine him, as it may be that his statement may entirely exonerate the accused, and put an end to the charge." Upon

Evidence for
the prisoner.

the question of whether or not justices are bound to hear and examine witnesses adduced by the prisoner as his answer or defence to the charge against him, much doubt has arisen from the very vague language of the 17th section of 11 & 12 Vict. c. 42, and the magistrates of Leeds, wishing to have the authority of a legal opinion for their guide in the matter, lately submitted a case upon this and other points to the Attorney-General and three other gentlemen of great learning and eminence in their profession, whose answer was as follows :

"The question firstly submitted to us is clearly not free from difficulty, but, considering that the practice under the old statutes (1 & 2 Ph. & M., c. 13; and 2 & 3 Ph. & M. c. 10), as stated by Dalton, Comt. Just. Ch. 165 (ed. 1746) was to examine a prisoner's witnesses, and that the language of the 11 & 12 Vict. c. 42, s. 17, admits of such a construction, and that the interests of justice require it, we think that it is incumbent on magistrates to hear and examine such of the witnesses offered by a prisoner as appear (in the language of the statute) to know the facts and circumstances of the case;" and they further gave it as their opinion that such examinations ought to be reduced to writing, signed, and certified in the same way as examinations taken on the part of the prosecution, and that such examinations of the prisoner's witnesses should be transmitted with the examinations of the witnesses for the prosecution, though it is no part of the magistrate's

duty to bind over such prisoner's witnesses, unless they give evidence which appears to be material for the prosecution. (See *The Magistrate*, vol. 3, p. 118, Sept. 1851.)

CHAPTER VIII.

DECISION OF JUSTICES AS TO DISCHARGING OR COMMITTING FOR TRIAL—IMMUNITY OF JUSTICES—WHETHER TO COMMIT TO SESSIONS OR ASSIZES.

Decision of justices as to discharging or committing for trial.

THE case being concluded, the justices will form their judgment as to whether or not it is sufficiently strong against the accused to warrant their committing him for trial. Upon this point the 25th section of the 11 & 12 Vict. c. 42, contains some practical directions. By that section, it is enacted—

That, when all the evidence offered upon the part of the prosecution, against the accused party shall have been heard, if the justice or justices of the peace then present shall be of opinion that it is not sufficient to put such accused party upon his trial for any indictable offence, such justice or justices shall forthwith order such accused party, if in custody, to be discharged as to the information then under inquiry; but if, in the opinion of such justice or justices, such evidence is sufficient to put the accused party upon his trial for an indictable offence, or, if the evidence given raise a strong or probable presumption of the guilt of such accused party, then such justice or justices shall, by his or their warrant (T. 1), commit him to the common gaol or house of correction for the county, &c.

It is, of course, idle to attempt to suggest any general rules for the guidance of the discretion of justices upon the question as to whether or not, in any given case, they should commit or discharge. Each case must depend upon its own peculiar merits, and reliance must be placed upon the justices that they will exercise the

discretion with which they are clothed with soundness, and with the ends of individual and public justice alone in view. In *Cox v. Coleridge* (1 B. & C. p. 50), Mr. Justice Bayley observed, "I think that a magistrate is clearly bound, in the exercise of a sound discretion, not to commit any one, unless a *prima facie* case is made out against him by witnesses entitled to a reasonable degree of credit." Justices, in the performance of this part of their duty, should not balance the evidence adduced for or against the prosecution, and so decide according as it preponderates, for this would be, in reality, taking upon themselves the functions of the petty jury, and trying the case; but they should ask themselves whether or not the evidence, as it is left, makes out a strong or probable, or even a conflicting case of guilt against the accused; in any one of which cases, they will do right in committing the party to trial. If, however, either from the slender nature of the evidence, the unworthiness of the witnesses, or the conclusive affirmative evidence of innocence produced on the part of the prisoner, the justices feel that the case is not sustained, they should at once discharge the accused, and so put an end to the inquiry, as far as they are concerned.

In forming an opinion as to which course it will be proper to pursue, the justices will not forget that the law throws around them complete immunity for any error of judgment which they may commit, provided the case is within their jurisdiction. This position is too well established to require authorities in its support; there is one, however, which may, with propriety, be referred to, as being a recent and a most lucid exposition of the law on the subject. The case was that of *Cave v. Mountain* (1 Man. & Gr. 257), which was one of a summary conviction, and, in delivering the considered judgment of the

Immunity of
Justices in
cases within
their juris-
diction.

Decision of
Justices.

court, Tindal, C. J. said, "As to the first objection, there can be no doubt that, if a magistrate commit a party charged before him in a case where he has no jurisdiction, he is liable to an action of trespass ; but, if the charge be of an offence over which, if the offence charged be true in fact, the magistrate has jurisdiction, *the magistrate's jurisdiction cannot be made to depend upon the truth or falsehood of the facts, or upon the evidence being sufficient or insufficient to establish the corpus delicti brought under investigation.* * * * * *

As to the second ground of objection, it is answered in part by the fact that there was a regular information upon oath laid before the magistrate, the original information having been brought up at the request of both parties. That the information does not disclose any *legal* evidence of the guilt of the prisoner, is undoubtedly true, it states nothing beyond mere hearsay, upon which neither judge or juries could act. But, at the utmost, this amounts to no more than an error in judgment on the part of the magistrate, and no case can be found in which a magistrate, acting within his jurisdiction, has been held liable in an action of trespass, for a mere error in judgment. It would be a very different case, if the defendant had acted from any malicious or improper motive, or with any want of *bonâ fides*, in which case he would be liable in a different form of action."

If the justices decide that the evidence is not sufficient to put the accused party upon his trial, they are to order him to be forthwith discharged as to the information then under inquiry. But it will, of course, not be supposed that such a discharge will prevent similar proceedings being taken against him at a future time, should additional evidence arise to support the charge, nor will it prevent the prosecutor from preferring an

indictment for the same offence at the sessions or assizes.

If, however, the justices decide upon committing the party to trial, they will first consider whether or not the offence is triable at the sessions or only at the assizes, and whether or not if it be triable at either it will be more judicious to commit to one or the other of these tribunals. Every acting justice is, of course, familiar with the fact that certain classes of offences are not triable by them at their quarter sessions, and that crimes comprehended in those classes can be tried alone at the assizes. The 5 & 6 Vict. c. 38, points out what these offences are, and the clerk to the justices will at once know whether the case before them is triable at the sessions, or alone at the assizes. But even if the case be within the jurisdiction of the justices at sessions, it is competent to them, as it would seem, in any case of great difficulty, to act under the proviso in their commission, "that if a case of difficulty upon the determination of any of the premises before you, or any two or more of you, shall happen to arise, then let judgment in no wise be given thereon before you, or any two or more of you, unless in the presence of one of our justices of the one or other bench, or of one of our justices appointed to hold the assizes in the aforesaid county." However, with the limited and defined jurisdiction of the quarter sessions at the present day, and the power of reserving a case for the opinions of the Court for Crown Cases Reserved under the provisions of the 11 & 12 Vict. c. 78, no case can well arise justifying the justices in abstaining from committing to the sessions in a case within their jurisdiction. But if the assizes for the county will occur prior to the period for the holding of the next sessions, the justices should commit to such assizes, even though in point of locality it might be more convenient that

Whether to
commit to
the sessions
or the assizes.

Whether to
commit to
the sessions
or assizes.

the prisoner should be tried at the sessions. It was formerly thought, that if prisoners were committed for trial at a sessions, and an intervening assizes took place, that it would be the duty of the judge of assize, if no prosecutors appeared, to discharge such prisoners upon proclamation, under his commission of general gaol delivery ; and instances have occurred in which judges have so acted, and it is far from clear that under such circumstances it is not their imperative duty to do so. It was, moreover, long a question whether the jurisdiction of the sessions was not suspended or determined by the arrival of the judges of assize in the county. This doubt has, however, recently been satisfactorily set at rest by the Court of Queen's Bench, in the case of *Smith v. The Queen* (in error) (3 New Sess. Cas. 564; 3 New Mag. Cas. 223; 3 Cox's Crim. Cas. 586), where the question was, whether a conviction of a party at a borough sessions holden whilst the assizes were being held for the same county was good. The arguments were very astute, and the judgment a very sound one, a part of which latter, from its practical importance, we beg here to transcribe: "The truth seems to be," said Mr. Justice Coleridge, in delivering the considered judgment of the court, "that from the fact of the sessions of the peace not being held during the assizes for reasons of convenience, a common notion has prevailed that they cannot by law be so held, for which notion we cannot find any other sufficient reason. Doubtless the assizes interfere sometimes in point of time with the holding of the sessions, and therefore the 4 & 5 Will. 4, c. 47, was passed to authorize the appointment of some other time for holding the quarter sessions usually held at Easter. But this may have been for the sake of convenience, without implying that there arose any conflict of legal authority. It is true that

the commission of gaol delivery commands the judges to deliver the gaol of the prisoners therein being, and it therefore gives them an authority which might, in fact, conflict with the justices in sessions trying the prisoners in the gaol under their commission of the peace. It does not, however, appear that there is any law or rule of law at present which ousts them of their jurisdiction, and it is with the strict law alone that we have at present to deal. We are, therefore, brought to the conclusion that the writ of error cannot be supported, and that our judgment must be for the crown. But although we are of opinion that there was no defect of jurisdiction—nor, indeed, on a consideration of all the circumstances, any inconvenience, in holding the sessions at which the plaintiff in error was convicted during the time of the assizes (for in this respect there may be an obvious distinction between a recorder and the magistrates of a county), yet we cannot dismiss this case without expressing our opinion that it would be highly inconvenient and improper, generally speaking, for the magistrates of a county to hold their sessions concurrently with the assizes, even in a different part of the county. Of course, we cannot anticipate that they would hold them concurrently at the same place.”

Commitment
to assizes or
sessions.

This case having determined the question of right, it is nevertheless obvious that all committals should be to the assizes, in the event of their occurring prior to the time for the holding of the sessions. These observations, however, do not apply to borough sessions, which stand upon a different footing, and which, as being established with the view to *local* convenience, will not follow the rule as laid down with reference to county sessions. In the case, therefore, of borough sessions, the committals will wisely be made to the next sessions for that

locality, irrespective of any intervening assizes; the object of borough sessions being to bring the administration of criminal justice home to the doors of the burgesses, which object would be evaded if the burgesses were compelled to travel to the assizes twice in the year to obtain that which they could so much easier and so much more economically obtain in their own towns.

CHAPTER VIII.*

ADMITTING TO BAIL—UNWILLING OR REFRACTORY WITNESSES—COMMITTING FOR TRIAL—MONEY OF PRISONERS—COPY OF DEPOSITIONS—READING OVER AND SIGNING DEPOSITIONS—TRANSMISSION OF DEPOSITIONS TO PLACE OF TRIAL—CERTIFICATE OF EXPENSES.

THE justices having determined upon committing the accused party to trial, they will probably be requested to accept bail for his appearance; and hereupon a most important duty will devolve upon them—the duty of determining whether or not they are *bound* to accept bail, or ought in that particular case to accept it.

The law upon the subject of admitting parties accused of indictable offences to bail has recently undergone much modification; under the old law, as it stood before the passing of the 11 & 12 Vict. c. 42, justices had a discretion in all cases of felony to admit to bail, and in all cases of

indictable misdemeanors (with a few exceptions only,) it was *compulsory* upon them to accept bail, if sufficient bail were offered; in the case of a felony, however, it being necessary that the bail should be taken by two justices. By sect. 23, however, of the above-mentioned statute, whilst the discretion of justices is not interfered with in cases of felony, and *one* justice alone can admit to bail, they have a discretion expressly conferred upon them as to admitting to bail in certain cases of misdemeanor, namely: 1st, assault, with intent to commit any felony; 2nd, any attempt to commit any felony; 3rd, obtaining or attempting to obtain property by false pretences; 4th, a misdemeanor in receiving property stolen or obtained by false pretences; 5th, perjury, or subornation of perjury; 6th, concealing the birth of a child by secret burying or otherwise; 7th, wilful or indecent exposure of the person; 8th, riot; 9th, assault in pursuance of a conspiracy to raise wages; 10th, assault upon a peace officer in the execution of his duty, or upon any person acting in his aid; 11th, neglect or breach of duty as a peace officer; 12th, any misdemeanor for the prosecution of which the costs may be allowed out of the county rate. In all the foregoing classes of misdemeanors, justices have now a discretion to admit or not admit the accused to bail, and from the very comprehensive character of the last-enumerated class of cases, it will be seen that there are few misdemeanors in which their discretion may not be exercised. In cases of misdemeanors not within any one of the foregoing classes, and in which the defendant has *a right* to be bailed, it will be the duty of the justices not to refuse it if substantial bail be offered. To refuse bail in a case in which a defendant is entitled to it, is, in the eye of the law, a serious dereliction of duty, and may subject the justices to consequences of a most painful character.

Admitting
to bail.

Admitting
to bail.

Upon this point, the case of *Reg. v. Badger and another* (4 Q. B. 468), is an important authority. In this case a criminal information was moved for against two justices for refusing to take responsible bail on behalf of a party who was charged with uttering seditious language at an unlawful assembly, the ground of the refusal being that the two sureties had attended Chartist meetings. The judgment, which gravely censured the justices for their refusal, enters fully into the law upon the subject, and deserves a careful perusal by all acting magistrates.

It must not, however, be supposed that in accepting bail, even in cases in which the law has not positively invested them with a discretion, that justices are to act merely ministerially. Some discretion is to be exercised by them, and should they refuse bail in a case in which the law says they ought to accept it, they will not be liable to an action if it appear they acted without malice. This point came under the consideration of the Court of Queen's Bench in *Linford v. Fitzroy*: (3 New Sess. Cas. 438; 3 New Mag. Cas. 144; 18 L. J. 108, M. C.) In that case the plaintiff had been charged (prior to the 11 & 12 Vict. c. 42) with assaulting a constable in the execution of his duty, and two sufficient sureties were offered as bail, whom the defendant (a justice) refused to accept on the ground that, on a previous occasion, the plaintiff had absconded. The jury found that *the defendant refused sufficient bail, but that he did not act maliciously*; and upon the case coming on before the court above on the point of whether or not it was necessary in such a case for the plaintiff to prove express malice, the court held that the duty of a justice in accepting bail was essentially a *judicial* one, and that being so, he could not be made liable to an action for a mistake in doing or omitting to do anything in

respect of that duty, unless he can be fixed with malice, which, in the case before them, had been negatived by the jury. It will be observed that in the foregoing case the jury expressly negatived malice, which was a necessary ingredient ; but inasmuch as the law clearly recognises a right to be bailed in certain classes of misdemeanors, a justice, in refusing substantial bail, will fairly open himself to the imputation of acting maliciously, and very slight evidence will be sufficient to make him answerable in damages.

In cases in which justices have a discretion as to admitting to bail, they will be guided in their determination alone by *the probability of the appearance of the accused at the time and place of trial* ; the probable innocence or guilt of the party, though well deserving of consideration, is not the criterion by which alone their determination should be formed. Cases may be suggested in which it would be more destructive to a party to escape his trial than to appear and be found guilty ; under the late act of the 5 & 6 Will. 4, c. 33, s. 3, justices were expressly empowered to bail, "*notwithstanding such person or persons shall have confessed the matter laid to his or their charge,*" &c. ; and although these words are not found in the repealing act of the 11 & 12 Vict. c. 42, yet the words in sect. 23 of this statute are sufficiently large to include a case where the party even admits his guilt. In coming to a decision upon this question the justices will remember that the only purpose to be served by a commitment to prison before trial, is to secure the personal appearance of the accused at the time and place of trial ; and that, inasmuch as the law abhors unnecessary severity, and a party confined in gaol is necessarily subjected to very many privations and restrictions, which indeed may react upon his family and

As to exercising a discretion with reference to bailing.

dependants, it is an act of common justice not to subject him to them, if the justices can satisfy themselves that public justice will not be periled by admitting the party to bail. Undoubtedly, in every case, the accused can never be so safe as when locked up, but the law in its humanity is ready to incur the risk of occasionally being defeated rather than be exposed to the imputation of harshness and severity. The probable guilt or innocence of the accused will doubtless be a weighty consideration with the justices, since the stronger the probability of a conviction, the stronger the motive for avoiding a trial ; but in addition to this consideration, they will take into their view the station, general character, family, and connexions of the accused, and hence form their opinion as to the course they should pursue.

Sureties
and amount
of bail.

Should the justices permit the accused the liberty of being bailed, they will state what sureties they will require and to what amount ; and here again they will be guided by many of the considerations which have influenced them in their decision to admit to bail. The complexion and character of the offence, the station, degree, and circumstances of the accused should be well considered, since that amount of bail which would be adequate to secure the appearance of a poor man, or one against whom the evidence is slight, might be altogether inadequate to insure the forthcoming of one in affluent circumstances, or against whom the evidence is strong. The number of sureties, and the amount in which they are to be bound, will be dependent upon many considerations; it being always borne in mind that to demand *excessive bail* is unlawful, and declared to be so by the Declaration of Rights, 1 Will. & M. sess. 2, c. 2, and that an action may lie at the suit of the party injured,

or an indictment may be supported. A very wide latitude will of course be permitted to the justices in deciding upon what bail they will require, each case and the circumstances of each party requiring the exercise of judgment and discretion.

The number of sureties is in the discretion of the justices. It is usual, however, to require two ; but there is no reason why they may not be satisfied with one only, sect. 23 of the 11 & 12 Vict. c. 42, speaking of *surety* or sureties. The amount, also, the justices will determine upon; it being, however, usual, in the more ordinary cases, to require not less than 20*l.* from each of the sureties, and double that amount from the principal. The sureties themselves should be housekeepers, though there is no imperative rule upon this subject; but as such sureties only should be received as may be made answerable in the event of a default, it is obvious that no person who is not a housekeeper, having a settled habitation wherein a levy can be made, can answer the purposes intended by the proceeding. When bail, therefore, are tendered, it will be right and proper for the justices to interrogate them as to all those facts which will satisfy them as to their sufficiency, and either to accept or reject them as their answers may warrant.

If the bail are at once produced, it is proper (if they are satisfactory) to proceed at the time with the process of bailing, which will be under the practical management of the clerk to the justices, who will inform the accused and his bail of their liabilities, and obtain their assent thereto according to the forms prescribed by the before-mentioned 23rd section and the forms S. 1, 2, to which recognizance the justices will affix their signatures. If, however, any well-founded doubts should exist as to the eligibility

Bailing and
remanding
to obtain
bail.

of the bail, the justices will do well to postpone for a short time the taking of the bail, in order that inquiries may be instituted upon the subject, and hereupon to remand the accused as in the case of a further examination.

Bailing a party already in custody.

The 23rd section contains ample instructions for the proceedings of justices in the event of a party already committed desiring to be bailed, to which section the attention of justices is particularly directed.

Committing, with a consent to take bail—notice of bail.

It may here be observed that, in every case in which the accused has a right to be bailed, the justices should inform him thereof, and also in all cases in which they think they may with propriety admit to bail, it will be becoming in them to state to the party that they are ready to accept bail, and in what amount; and should the accused not then be ready to give it, they should certify on the back of the warrant of commitment (according to form S. 1 in the foregoing section), their consent to such accused being bailed, stating also the amount of bail which ought to be required, which proceeding will authorize any other justice in admitting the party to bail. It is not unusual where the party is not at once admitted to bail, to make it a condition that he shall, before being admitted to bail, give the prosecutor a notice of bail, stating the names and residences of the proposed sureties, which notice is generally required to be twenty-four hours prior to the time intended for justifying.

When the principal and his bail have entered into their recognizance, a notice should be given to each of them in accordance with the form S. 2, referred to in sect. 23, in order that they may be the better aware of the precise nature of the obligation into which they have entered.

One justice may bail.

It will, of course, not be forgotten that in all cases one justice alone may take bail; and it may

here be observed that, by the foregoing section, justices are expressly forbidden to take bail in cases of treason.

The next duty of the justices will be that of binding the prosecutor and witnesses to prosecute and give evidence at the time and place of trial. The course to be pursued, and the form of the recognizance and notice, are pointed out in sect. 20 of the 11 & 12 Vict. c. 42, form O. 2, annexed thereto.

Before concluding this portion of the subject, it will be proper to refer to the course justices are empowered and ought to pursue in the event of their having to do with unwilling, obstinate, or refractory witnesses. By sect. 16, express power is given to justices upon its being made to appear, upon oath or affirmation, that any person within the jurisdiction is likely to give material evidence for the prosecution, and will not voluntarily appear for the purpose of being examined, to issue their summons according to form (L. 1), for the appearance of such witness ; and, upon due service and disobedience, to issue a warrant (L. 2), for his apprehension for the same purpose ; or, if the justices shall be satisfied by evidence, upon oath or affirmation, that it is probable that such person will not attend to give evidence without being compelled, they may issue their warrant in the first instance (L. 3) ; and if, in either of the two cases, the witness, on being brought before the justices, shall refuse to be examined upon oath or affirmation concerning the premises, or shall refuse to take such oath or affirmation, or, having taken such oath or affirmation, shall refuse to answer such questions concerning the premises as shall then be put to him, without offering any just excuse for such refusal, any justice of the peace present, and having jurisdiction, may, by warrant (L. 4), commit him to prison for a time not exceeding

seven days, unless he shall in the meantime consent. It will be observed that no power is here given to a justice to summon any witness on behalf of the accused; if such accused party require the attendance of a witness, the justices may, if they think the application reasonable, adjourn the hearing; but they cannot in any way compel the attendance of a witness for the prisoner.

Committing
a witness.

Should a witness, on the justices requiring him to be bound over to appear and give evidence at the trial, refuse to enter into or acknowledge such recognizance, the justice ought by his warrant (P. 1) to commit him to prison, to be safely kept until after the trial, unless in the meantime he duly enters into such recognizance before some justice: (see sect. 20.)

Committing
for contempt.

Whether or not justices sitting upon such an occasion as that to which we have been directing attention, have power to commit a party for a contempt, for using insulting language towards them, or otherwise obstructing their proceedings, has never yet been definitively settled, although the question has arisen in several cases (*Mayhew v. Locke*, 7 Taunt. 63; *Rex v. James*, 5 Bar. & Ald. 894); but although the sounder opinion would appear to be that they *have* such a power, it will, nevertheless, be prudent in justices, as the law has never been declared upon the subject, not to exercise it, but rather to content themselves by expelling the refractory party from their presence—a course of proceeding which will be free from all future difficulties.

Commitment
for trial—
costs of con-
veyance of
prisoner.

If the justices determine upon sending the case for trial, and bail be not taken, they will commit the prisoner to the common gaol or house of correction by their warrant, as pointed out by sect. 25, and form T. 1. They will also in due time ascertain the expenses of conveying the prisoner to gaol, and make out an order for the

amount payable by the county treasurer, pursuant to the provisions of sect. 26. It will, however, be observed that this section gives a discretion to the justices, where it appears that the prisoner has money sufficient to pay the expenses, or some part thereof, of conveying him to gaol, to order such money, or a sufficient part thereof, to be applied to such purpose. As, however, the law which gives this discretion presumes no man to be guilty until he is proved to be so, and as it may ultimately turn out that the accused is innocent of the crime imputed to him, and the taking away of his money may greatly embarrass him in defending himself against the charge, it will be more consistent with fairness and proper humanity if the justices exercise the discretion with which they are clothed in abstaining from making the prisoner pay for his own committal. Indeed, it would have been more consonant with even-handed justice, and more creditable to the character of our criminal law if no such power had been conferred upon justices as that to which we have adverted.

Whilst upon this subject of the money of prisoners, it will be as well to refer to the practice too prevalent of taking from an accused party all the money which at the time of his apprehension he may happen to have about him. When a party is apprehended upon a criminal charge, it is undoubtedly right that he should be searched to prevent his making use of any dangerous weapons, or, if the offence be one of robbery, to ascertain if he has about him any of the stolen property. But if the charge does not involve a theft, and the money which may be found upon the prisoner has obviously no connexion with the charge, it ought not to be taken away, as by depriving him of his property he is thereby deprived of his best, perhaps the only

Money of
prisoners.

Money of
prisoners.

means of defending himself from the charge. Upon this point Mr. Justice Patteson, in *Rex v. O'Donnell* (7 Car. & P. 138), well observed : "The prisoner complains that his money was taken from him, and that he was thereby deprived of the means of making his defence. Generally speaking, it is not right that a man's money should be taken away from him, unless it is connected in some way with the property stolen. If it is connected with the robbery, it is quite proper that it should be taken ; but unless it is, it is not a fair thing to take away his money, which he might use for his defence. I believe constables are too much in the habit of taking away everything they find upon a prisoner, which is certainly not right; and this is a rule which ought to be observed by all policemen and other peace officers." This sound doctrine has been frequently acted upon by other judges. It will therefore be likely often to occur when a party is committed, that he will apply to the committing justice to order money or other property taken from him by the constable to be delivered back again to him. In such a case, the justice will consider whether or not there is any connexion between the subject-matter of the charge and the property sought to be returned ; if there be, he will of course refuse to comply with the application; but should there be no connexion whatever, he will properly order the constable to redeliver to the prisoner whatever property he may have taken from him, so that it is of a harmless nature. It may possibly be urged against this latter course, that if it be right that the prisoner should have back his property, the chairman or judge at the trial can make an order for the purpose ; when, however, it is remembered that the redelivery at the time of trial may be too late to enable him to avail himself of it for the purposes of his defence, or

to prevent his family from seeking relief at the workhouse, the justice of at once making an order for the redelivery becomes strikingly apparent.

By sect. 27 of the 11 & 12 Vict. c. 42, it is enacted :— Copy of depositions.

That at anytime after all the examinations aforesaid shall have been completed, and before the first day of the assizes or sessions, or other first sitting of the court at which any person so committed to prison or admitted to bail as aforesaid is to be tried, such person may require and shall be entitled to have of and from the officer or person having the custody of the same, copies of the depositions on which he shall have been committed or bailed, on payment of a reasonable sum for the same, not exceeding the rate of three-halfpence for each folio of ninety words.

This enactment, it will be observed, does not apply to depositions furnished at the request of the prosecutor; it will be competent, therefore, to supply the depositions to him at a higher rate; the table of fees, however, will have provided for this. Nor does the section apply to the giving of a copy before the entire examination is finished; the prisoner, therefore, will have no right to demand a copy upon a remand: (*Reg. v. The Lord Mayor of London*, 5 Q. B. 555; *Ex parte Fletcher*, 13 L. J. 67, M. C.) Nor to any case where the party is not committed to prison, or held to bail to take his trial for some offence: (*Ex parte Humphrys*, 19 L. J. 189, M. C.; 4 New Mag. Cas. 86; 4 New Sess. Cas. 179.) It should also be observed that, as the section speaks only of *depositions*, he will have no right to a copy of his voluntary statement; though it is quite competent to the justices to give it to him with the depositions, and in many districts it is invariably given; indeed the most fair and liberal course is always to furnish it with the examinations, the spirit of the act being that the prisoner should have a copy of all that is to be adduced against him, and it being of importance

to him that he should be informed of what it is that is intended to be proved against him as coming from his own mouth.

Reading over
and signing
depositions.

It will, of course, not escape the attention of the justices, that the depositions when completed, should be read over to each witness, who should be required to affix his signature or mark to it, which depositions should also then be signed by the justices ; (sect. 17.) The voluntary statement also of the accused should be signed by the party if he consents, but this is not essential—the justices, however, should themselves sign it.

Transmission
of depositions
&c., to place
of trial.

The depositions, statement, and recognizances of all kinds, and which latter will have been formally prepared and have been signed by the justices (being kept together), should in due time be transmitted or given to the proper officer of the court in which the trial is to be had, before or at the opening of the said court at the day of the sitting, &c. (sect. 20.)

Certificate of
expenses.

Before the prosecutor and his witnesses leave the justice-room, a certificate of expenses should be made out, and, after being signed by the justices, should be delivered to the prosecutor, in order that at the trial he may be reimbursed the amount ascertained to be due. These expenses will be readily fixed according to the established table of fees, and the clerk to the justices will see that so much, and no more, as the prosecutor and witnesses respectively are entitled to, is allowed.

CHAPTER IX.

THEIR DUTIES WITH RESPECT TO SUMMARY CONVICTIONS—CONVICTIONS UNDER THE VAGRANT ACT (5 GEO. 4, c. 83.)

HAVING considered at much length the duties of justices with reference to the hearing of criminal charges with a view to a committal to trial, we will proceed to the consideration of the other principal class of their functions, namely, *the hearing of complaints to be adjudicated upon by way of summary conviction.*

We need hardly remark that the branch of the duties of justices of the peace, upon which we are about to treat, demands the gravest and most careful consideration of the magistracy. The importance of the interests committed to their charge, the magnitude of the consequences flowing from their decisions, and the ruin to individuals which must frequently be the necessary result of their decisions, call for the exercise of the nicest discrimination and the wisest judgment which they can possibly command. Compared with this grand division of their duties all other functions of justices of the peace are insignificant; and although great caution and prudence are required in the discharge of all duties of justices, more particularly are they needed when sitting judicially to hear and determine upon summary conviction.

By the policy of the Legislature in modern times numerous classes of subjects have been referred to the determination of justices of the peace, and so convenient and generally satisfactory has this reference been found to be, that not a session of Parliament passes without a considerable addition being made to the number. To enumerate the various matters over which

justices have a summary jurisdiction, would be a task of no ordinary magnitude; the six bulky volumes of Burn's Justice sufficiently attest their extent. With such a jurisdiction, therefore, and confided frequently to one justice, with very often no power of appeal or other means of reviewing his determination, the necessity for the exercise of great discrimination, prudence, and judgment is perfectly apparent.

Commit-
ments under
the Vagrant
Act, 5 Geo. 4,
c. 83.

Before entering generally into the course of procedure upon cases brought before justices for a summary hearing, it will, perhaps, be well to dispose of one great class of cases of this sort, which, more frequently than any other, is presented for their consideration: we allude to that which arises under the Vagrant Act. By the 5 Geo. 4, c. 83, commonly called "The Vagrant Act," provisions are made for the dealing with three classes of offenders, namely: first, "idle and disorderly persons;" secondly, "rogues and vagabonds;" and, thirdly, "incorrigible rogues."

The act of Parliament points out what constitutes a person any one of these, and how he is to be dealt with, and in the great majority of cases the facts will be too simple to create the slightest difficulty. The offending party will generally have been brought up in the custody of some officer or other person who has actually caught him in the fact, as by begging in the streets, &c. If, however, the party be not caught in the fact, or on quick pursuit, a summons or warrant will be necessary as in all other cases. In cases under this statute the facts are generally so exceeding simple, and so clear of proof and difficult of denial, that the hearing is of the most summary character, and the case is disposed of in a few moments. It nevertheless may assume a more serious character, as, where it is sought to bring some impostor who has been imposing upon the public by some novel deception within

the provisions of the statute ; in which case it will behove the justice to observe the same rigid formalities and course of procedure as any other class of cases, particularly as under this statute a power of appeal is given, and the party also may be brought up (on being committed) by *habeas corpus* and discharged, upon which subject the case of *Reg. v. Cavanagh* (1 Dowl. N. S.) may be read with advantage.

Commit-
ments under
the Vagrant
Act.

There are three or four descriptions of persons falling within the terms of the foregoing statute whose cases will at times require, at the hands of the justices, a very scrutinizing investigation. By this statute it is enacted, that every common prostitute wandering in the public streets or public highways, or in any place of public resort, and behaving in a riotous or indecent manner, shall be deemed to be an idle and disorderly person, and may be committed to the house of correction, and be there kept to hard labour for any term not exceeding one calendar month. The caution necessary in investigating a charge of this kind is, to ascertain that the charge is not preferred from vindictive or personal motives. It is an easy thing for a policeman or any one else who may harbour an ill feeling against a female who may be bereft of friends or relatives to protect her, and who may be getting an honest though scanty living by her industry, to denominate her a common prostitute, and to charge her with behaving in an indecent manner. Instances, we believe, have often occurred where innocent, but poor and friendless girls, who, after successfully resisting the arts of some libertine, and having been goaded to turn round and denounce him, have been given in charge by their persecutors as prostitutes under this statute, and afterwards committed to gaol. The process of preferring and substantiating the charge is so simple, speedy, and inexpensive, and affords so

Commit-
ments under
the Vagrant
Act.

tempting an opportunity for the gratification of bad and malignant passions, that justices cannot be too guarded when called upon to act in such a case.

Another very frequent charge under this statute is that under sect. 4, wherein, amongst other descriptions of persons described as rogues and vagabonds, we find set down, "every suspected person or reputed thief frequenting any river, canal, or navigable stream, dock, or basin, or any quay, wharf, or warehouse near or adjoining thereto, or any street, highway, or avenue leading thereto, or any place of public resort, or any avenue leading thereto, or any street, highway, or place adjacent, with intent to commit felony." It will be seen that the material words here, when selected from the others, amount to this :—"Every suspected person frequenting any street with intent to commit a felony," is to be deemed a rogue and vagabond, and he may, on conviction, be sentenced to three months' hard labour. An offence so general in its terms, requiring so few facts to support it, so easily trumped up and so difficult to be rebutted, requires a very careful investigation at the hands of justices; it is a charge to which a poor man out of employment, and loitering his time away in the streets for want of something better to do, is peculiarly open, and we fear that in large towns police officers, more anxious to show their activity than their discernment, are but too ready to make it; a poorly dressed mechanic, out of work, and newly come into the town to seek the means of livelihood, is seen in the evening looking into some gaudy shop window; a constable comes up to him, and, without ceremony or civility, orders him to "move on;" the mechanic, indignant at this treatment, hesitates or refuses, the constable is irritated by the refusal, and full of the importance of his office, he collars the

offender and walks him off to the station, and the next morning he is brought before the justice upon the charge of being a rogue and vagabond, the testimony of the constable proving that he is a suspected person, and that he was frequenting the streets to commit a felony. The officer is, too generally, readily believed; and as the unfortunate mechanic can have no proof to the contrary, he is forthwith convicted and sent to the House of Correction for a month's hard labour. That such instances have occurred we have positive proof, and we have strong reason for believing that they are not of unfrequent occurrence.

Commitments under the Vagrant Act.

Now, when it is remembered that whether or not a party be a bad character, he necessarily becomes one after being sent to gaol as a rogue and vagabond—that his character is gone for ever—that, after such a conviction, it is nearly hopeless for him to endeavour to obtain honest employment, and that he is almost necessarily thrown back amongst the worst classes, who are the only ones who are ready to receive him, it behoves justices to pause ere they consign a party to so miserable a fate. We know that with many justices a conviction under this statute is thought to be a very light matter, and that they conceive that a few weeks' imprisonment and hard labour operate as a very wholesome correction for evil propensities; the law certainly points out imprisonment and hard labour as the punishment to be awarded, but we believe that whilst no man is reformed by such a corrective, very many are made infinitely worse, and ultimately wholly ruined by its infliction. We firmly believe that a few kind and admonitory words from the justice, pointing out the evils which attend upon vicious courses, would reclaim many a man who is yet but upon the brink of crime, when a committal to gaol only confirms him in vice, and causes him to

plunge headlong into the vortex of infamy. We have thus dwelt upon the subject, because we believe that committals under this statute are often made hastily, and without a mature consideration of their important consequences, and because we feel that if there be any reclaimable disposition in the party committed, all hopes of reclamation must afterwards be at an end.

CHAPTER X.

SUMMARY CONVICTIONS—OF MATTERS PRELIMINARY TO THE HEARING—INFORMATION—SUMMONS OR WARRANT—APPEARANCE AND NON-APPEARANCE OF THE PARTIES—APPEARANCE BY COUNSEL OR ATTORNEY—OPEN COURT—ENFORCING ATTENDANCE OF WITNESSES.

THE first proceeding with the view of convicting a party upon a summary proceeding is that which has for its object the bringing of him into court, since, unless he be made cognizant, through some legal process, of a complaint against him, he cannot be convicted of the offence imputed to him. If a party, therefore, has a ground of complaint which can be adjudicated upon by way of summary conviction, his first proceeding will be to apply for process to compel the appearance of the defendant to answer the charge. This application will be made to a justice. The information upon which the process is to issue will either be in writing or be verbal; if, by the provisions of any statute upon which the proceedings are had, it is required to be in writing, then it *must* be so; so, too, if the subject-matter be of a special or difficult character, it would be as well that it should be in writing ;

and in all cases in which a warrant is to issue in the first instance, inasmuch as the information must be upon oath, so it should also be reduced to writing. The justices, however, as having a controlling discretion over the practice of their own courts, when that practice is not in opposition to some rule of law, can direct in what cases informations shall be taken in writing.

The process to be issued is of two sorts, namely, a summons and a warrant, and when the one or the other is to be issued, will depend upon the particular circumstances of the case. As a general rule it may be laid down that, unless there is strong reason to believe that the summons will be ineffectual in causing the defendant to appear to answer the charge, a warrant ought not to issue. If the case be one of great emergency, and there be a well-founded reason for believing that the defendant will not appear to the summons, and that he will escape justice, a warrant ought to issue for his apprehension; but to justify such a process issuing, in the first instance, the subject-matter of the information (as we have before seen) must be deposed to upon oath.

The summons or warrant.

It may be proper here to remark, that by sect. 29 of the 11 & 12 Vict. c. 43, one justice alone is competent to do all necessary acts and matters preliminary to the hearing, even in cases where by statute such information must be heard and determined by two or more justices.

The summons, when granted, will be served by the constable or other person to whom it has been delivered for service upon the person to whom it is directed (*i. e.* the defendant), "by delivering the same to the party personally, or by leaving the same with some person for him at his last or most usual place of abode:" (sect. 1.) The summons itself will be made returnable at some subsequent day, giving the

Service of summons.

defendant a sufficient interval to prepare himself to meet the charge. Forms, both of the summons and warrant, are supplied by the act before mentioned.

Appearance
and non-
appearance
of the parties.

Upon the day appointed for the hearing, the information will be heard in its order, and according to the practice established by the justices. Should the defendant appear and the complainant not, it will be the duty of the justices to dismiss the case. Upon this point sect. 13 of the 11 & 12 Vict. c. 43, after enacting, as just stated, states, "unless for some reason he or they (the justice or justices) shall think proper to adjourn the hearing of the same unto some other day, upon such terms as he or they shall think fit, in which case such justice or justices may commit the defendant in the meantime to the house of correction, or place of security, or to such other custody as such justices shall think fit, or may discharge him upon his entering into a recognizance with or without surety or sureties, at the discretion of such justice or justices conditioned for his appearance at the time and place to which such hearing shall be adjourned."

Should, however, the complainant be present and the defendant not, then the justices will pursue one of several courses as they may deem most advisable. It will probably occur that the defendant will send an excuse for his absence, and allege illness, attendance elsewhere in the discharge of some public duty, or the like, as its cause. In such a case, if the justices are satisfied that the excuse is *bonâ fide*, and is reasonable, and that public justice or the rights of the complainant will not be compromised by delay, they will do well to adjourn the hearing to a future day, directing notice of the adjournment, or a fresh summons, to be served upon the defendant; or, indeed, without such positive

excuse, if they can gather from the circumstances that the absence of the defendant has been accidental or unavoidable, and with no view to defeat the ends of justice, and that his appearance will be insured by an adjournment, they will then do well to adjourn. If, however, no excuse be offered for the non-appearance of the defendant, the justices should direct him to be called in the outer parts of the building, and upon his not answering, they should swear and examine the constable as to the particulars of the service of the summons, and, having regard to sect. 1, which points out the manner of service, they should carefully consider the particulars of the service, and if they should be dissatisfied with the service, they should either issue a fresh summons, or, upon having a deposition upon oath, issue their warrant of apprehension. If, however, from the evidence of the constable they are satisfied that the defendant has been duly served, they can pursue one of two courses: they can either issue their warrant of apprehension, and in this case without any deposition upon oath, though it will be prudent that oath should be made; or they may proceed to hear the case *ex parte*.

In coming to a decision upon the sufficiency of the service of the summons, the justices cannot be too particular, since, should the defendant not in fact appear, and it should really happen that the service has not been legally sufficient, the subsequent proceedings of the justices will be without jurisdiction, and consequences of a serious nature to the justices themselves may result: (*R. v. Jones*, 1 L. M. & P. 357; 15 L. T. 142; 2 New Mag. Cas. 88; *Reg. v. Evans and Gale*, 4 New Mag. Cas. 191, &c.; also *Ex parte Williams*, 18 L. T. 98; *Ex parte Hopwood*, 4 New Sess. Cas. 174.) If, therefore, the justices have any reasonable doubt of the sufficiency of the

service, they should adjourn the hearing, and direct the defendant to be re-summoned.

Appearance
by counsel
or attorney.

It will be proper that the justices at this stage of the case should bear in mind the provisions of the before-mentioned statute relative to the right of parties to appear by counsel or attorney. Sect. 13 gives the complainant a right to appear, in support of his complaint, by his counsel or attorney, and, by sect. 12, he has a right to conduct his case by such counsel or attorney. So, too, as regards the defendant ; it is not only by the latter section enacted that he may make his full answer and defence, and have the witnesses examined and cross-examined by counsel or attorney on his behalf, but by the latter end of sect. 13 it is enacted that, "if both parties appear either personally or by their respective counsel or attorney before the justice or justices who are to hear and determine such complaint or information, then the said justice or justices shall proceed to hear and determine the same." It is quite clear from this, not only that the defendant has a right to appear by counsel or attorney, but that if he does so appear, and is prepared for his defence, and the complainant is ready also, the justices are bound to proceed and determine the case; and that they have no right in such a case to forbear proceeding merely because the defendant is not personally present. In such a case this difficulty will arise: have the justices, notwithstanding such appearance by counsel or attorney, a right to insist upon the defendant's personal appearance? If the justices, notwithstanding the defendant appears only by counsel or attorney, are bound to go on and adjudicate, the power in such a case to require the personal attendance of the defendant would appear to be unnecessary; and yet it is possible that, for the ends of justice, it may be necessary that the defendant should be actually present; and cer-

tainly it would appear, from sect. 2 and the commencement of sect. 13, giving the justices power, after due service of the summons, to issue their warrant, or proceed to the hearing *ex parte*, that the individual and personal appearance only was intended. It appears, upon a careful consideration of these sections, first, that if upon due service the defendant does not appear, either personally or by counsel or attorney, the justices may either issue a warrant or proceed to hear the case *ex parte*; or, second, if the defendant does not attend personally, but only by counsel or attorney, the justices are then bound to hear the case, but may, nevertheless, issue their warrant of apprehension. It must be admitted that much difficulty besets this question, and to avoid any ulterior unpleasant consequences to the justices, it would be advisable for them, in a case in which the defendant appears only by counsel or attorney, not to issue their warrant of apprehension, but should the case require the personal presence of the defendant, to adjourn the case, and then either summon the defendant to appear, or upon oath to grant a warrant of apprehension.

By sect. 12 it is enacted, that "the room or Open court. place in which such justice or justices shall sit to hear and try any such complaint or information, shall be deemed an open court, to which the public generally may have access, so far as the same can conveniently contain them." The justices have, of course, full powers to preserve order and decorum in the apartment where they administer justice; and although little doubt can exist that they have the power to commit for a contempt committed in their presence, it would be as well not to exercise that power, but to proceed by the safer and equally efficacious method of expelling the offender from the court: (see *ante*, p 58.)

Enforcing
attendance
of witnesses.

By sect. 7 full powers are conferred upon the justices to compel the attendance of witnesses, either for the complainant or the defendant.

CHAPTER XI.

HEARING THE CASE EX PARTE—APPEARANCE OF DEFENDANT—PRELIMINARY OBJECTIONS—PROCEEDING UPON THE HEARING—CONFESSING AND DENYING THE CHARGE—PROCEEDING UPON THE DEFENDANT'S DENYING THE CHARGE—ORDERING WITNESSES OUT OF COURT—COURSE OF PROCEEDING—EVIDENCE—WHO MAY ADDRESS THE BENCH—EXAMINATION AND CROSS-EXAMINATION OF WITNESSES.

Hearing the
case *ex parte*.

WE have before seen in what case of the absence of the defendant the justices may proceed to the hearing of the information *ex parte*. Supposing, therefore, that such a state of things exists as will justify the magistrates in proceeding to a hearing in the absence of the defendant (and herein they cannot be too cautious, inasmuch as should it ultimately transpire that the defendant has really never been properly served, very serious consequences may in the end result), they will hear the case with the same care, attention and deliberation, as though the defendant were actually present, his absence in no way justifying the slightest departure from strict proof, and the most formal and critical examination and inquiry. Indeed, in the absence of the defendant, it will be becoming in the justices to receive with greater caution the evidence tendered in support of the charge, and to examine and cross-examine the witnesses with a greater amount of vigilance and

care. The course of proceeding will in its various stages be the same, whether the defendant appear or not.

If the defendant appear, it is possible that he will make some preliminary objection to the summons, warrant, or the information. Upon hearing the objection, the justices will form their opinion upon its sufficiency, and herein they will be guided by the provisions of the 11 & 12 Vict. c. 43, ss. 1, 3, 9, to which it is unnecessary here further to refer.

Appearance
of
defendant—
Preliminary
objections.

The information, complaint, or summons, having been read to the defendant, he will be asked if he has any cause to show why he should not be convicted, or why an order should not be made against him, as the case may be; and if he thereupon admit the truth of such information or complaint, and show no cause or no sufficient cause why he should not be convicted, or why an order should not be made against him, then the justice or justices present are to convict him, or to make an order against him accordingly: (11 & 12 Vict. c. 42, s. 14.) In many cases the penalty is a fixed and unalterable one; but in the great majority, the justices have a wide discretion upon the subject, and in the latter case it will be well for them to inquire to some extent into the peculiarities of the case, and the extent of the defendant's misconduct, in order that their judgment may be nicely apportioned to the merits of the case. However, before receiving a plea of *guilty*, it will be proper for the justices to explain to the defendant the legal definition and quality of his supposed offence, pointing out to him the statutory enactment (when the offence is not of the very commonest order), under which he is charged, lest from an ignorance or a misapprehension of the precise statutory provisions comprehending his offence, he may be induced to plead

Proceeding
upon the
hearing—
Confessing
and denying
the charge.

guilty to a charge with the legal merits of which he is totally unacquainted. Too much caution in this respect cannot well be used, particularly in the cases of married women, who, from an ignorance of the immunity and protection occasionally thrown around them by the law, and a natural inaptitude at appreciating those nice distinctions which frequently exist between *legal* guilt and innocence, may confess to offences which, in the eye of the law, they have never committed. Indeed, it may be laid down as a sound proposition, that a confession of guilt, even in the shape of a plea of "guilty," made in ignorance of the requisites to constitute the offence, ought not to prevail: (*Rex v. Newton*, 2 M. C. C. 59; *Reg. v. Salter*, Exeter Spring Assizes, 1840; Justice of the Peace, 4th April, 1840.)

Proceedings
upon the
defendant's
denying the
charge—
Ordering
witnesses out
of court.

Should the defendant not admit the truth of the information or complaint, as is most usual, the case will then be conducted in a formal and systematic manner, the justices adhering as much as possible to those rules which they find obtaining in the Superior Courts. At this stage of the proceedings it is probable that either the complainant or the defendant will apply to the bench to have the witnesses ordered out of court. Should such an application be made, it will be proper for the justices (though not compulsory upon them), to comply with the request, and direct all the witnesses to wait in an adjoining room, until they are severally required; an exception is generally made in favour of medical witnesses, and the order is never understood to apply to the professional advisers of the parties. Should, however, any of the witnesses in defiance of this order remain in court, the justices will have no right to exclude their testimony, but such conduct will properly be the subject for strong observation, and will, naturally, much

weaken the strength of their evidence: (*Cook v. Nethercote*, 6 C. & P. 741; *Chandler v. Horn*, 2 Moo. & Rob. 423.)

All preliminary matters being arranged, the complainant, or his professional adviser, will state his case, as provided for by the 11 & 12 Vict. c. 43, s. 14. It will, however, at this stage of the proceedings be wise in the justices to have before them the act or acts of Parliament upon which the proceedings are being taken, for inasmuch as their powers in all cases of summary convictions (save those which have merely relation to the preservation of the peace), are founded entirely upon some legislative enactment, they will necessarily be at a loss properly to comprehend the quality of the offence, or their powers to deal with it, without having before them the legislative authority which describes the offence and gives them power to deal with it. In very many cases the inquiry will turn upon some abstruse and obscure clauses in a local act; in others upon the application of an entirely novel state of facts to an enactment never before sought to be so applied. In such cases especially, a careful reference to the statute book is indispensable; and, indeed, it may be laid down as a sound rule for the safe guidance of justices, to have before them at the outset in every case (except in those of the most ordinary and everyday occurrence), the legislative enactment upon which the proceedings are founded.

Justices should be careful to refer to the statute upon which the proceedings are had.

In all cases which are under the operation of the 11 & 12 Vict. c. 43, the course of proceeding upon the hearing is directed by sect. 14, which enacts that

Course of proceeding.

The said justice or justices shall proceed to hear the prosecutor or complainant, and such witnesses as he may examine, and such other evidence as he may adduce in support of his information or complaint respectively, and also to hear the defendant and such witnesses as he may examine, and such

other evidence as he may adduce in his defence, and also to hear such witnesses as the prosecutor or complainant may examine in reply, if such defendant shall have examined any witnesses or given any evidence other than to his, the defendant's, general character; but the prosecutor or complainant shall not be entitled to make any observations in reply upon the evidence given by the defendant, nor shall the defendant be entitled to make any observations in reply upon the evidence given by the prosecutor or complainant in reply as aforesaid.

Evidence.

It is not within the purpose of these pages to enter into an explanation of the rule of evidence, the subject being too extensive to be satisfactorily dealt with in a short summary. It may, however, be well to observe that, in the reception of evidence, three principal rules should be observed: first, that the best evidence should be produced; second, that it should be relevant to the question in dispute; third, that it should not be elicited by leading questions except when those questions are put by way of cross-examination or re-examination.

Who may
address the
bench.

It will be the duty of the prosecutor in every case to substantiate his charge in the first instance. It is usual and proper for him, or his attorney or counsel, to state the case to the bench. If the prosecutor is himself a witness, and has an attorney or a counsel, it will be wrong in the justices to permit him to address them, otherwise than upon oath and strictly to the facts, as it is desirable for the due administration of justice that the characters of advocate and witness should not be blended in the same person, and this will apply even to the attorney, who, if he be also a witness, ought not to be permitted to address the bench. This position is now well established by several cases. In the case of *Stones v. Byron* (16 L. J. 32, Q. B.; 1 B. C. Rep. 248), the plaintiff's attorney, in a trial before the sheriff, acted as his advocate by opening the case to the jury, cross-examining the witnesses, and making a speech in reply, and then tendered himself as

a witness, and gave evidence to rebut the case set up by the defendant; and upon a verdict being returned for the plaintiff the court above set it aside and made a rule absolute for a new trial. In that case Mr. Justice Patteson said, "I think where a party makes a speech to the jury, stating his case, cross-examines the witnesses called on the other side, makes a speech in reply, and then tenders himself as a witness, he ought not to be heard." In a subsequent case of *Dunn v. Packwood* (1 B. C. Rep. 312), it appeared that the plaintiff's attorney had acted in the double capacity of advocate and witness, in stating the case to the jury, and then tendering himself and being examined as a witness; and on a motion on this ground for a new trial, Mr. Justice Erle said, "I quite concur in the judgment of my brother Patteson in that case (*Stones v. Byron*), and think that a jury ought not to be put to consider testimony given by a witness after having just heard a speech from him as advocate in the cause. This principle was acted on by the late Lord Tenterden, and I think it is sound. The rule for a new trial must therefore be made absolute." The above cases were those of civil actions and before a jury; but the rule is still stronger in criminal cases, and applies with equal force to proceedings by way of summary conviction before justices, who, in such cases are, to all intents and purposes, the jury to decide upon them, and who, in the language of Mr. Justice Erle, ought not to be put to consider testimony given by a witness after having just heard a speech from him as advocate in the 'cause. In *Rex v. Brice* (2 Barn. & Ald. 606), the defendant had been tried and acquitted at the London sittings upon an indictment for perjury, and afterwards the prosecutor in person moved for a new trial, on the ground that the Lord Chief Justice had

Who may
address the
bench.

refused to allow him to address the jury and state the case for the prosecution ; and the court then said, "In a criminal prosecution instituted for the interests of the public in the name of the King, and not to gratify the objects of an individual, a prosecutor has no right to address the jury. Counsel indeed (who are in some measure under the control of the court) have this privilege allowed to them, because, from their professional education and habits of business, it is to be expected that they will not state to the jury anything but what is fit for them to hear. Besides, the prosecutor may be, and generally is, a witness; and it is very unfit that he should be permitted to state, not upon oath, facts to the jury which he is afterwards to state to them upon oath ;" and in the same case, Mr. Justice Bayley said, that "he remembered a case where Lord Ellenborough had allowed the prosecutor to address the jury, and afterwards, on being spoken to on the subject by the other judges, expressed his conviction that he had done wrong."

From the foregoing, the principle is well established, that no man who is to be a witness ought to be permitted to address the parties who are to act upon his testimony, in the character of an advocate. If, therefore, the prosecutor desire to make a statement of the case to the bench, he should be asked if he is himself a witness, and if he reply in the affirmative, his statement ought not to be received, but he should be sworn and his evidence taken only as a witness. Should he not be a witness, it will be right to allow him to state his case, and indeed this is expressly required by the terms of the 14th section of the 11 & 12 Vict. c. 43.

Examination
and cross-
examination
of witnesses.

The witnesses will be called and examined in the order best calculated to explain the case, the defendant being allowed to cross-examine each

one after the examination in chief, and the complainant re-examining as to any facts which have transpired in the course of the cross-examination having relevance to the matter in issue. Each witness will thus be called on the part of complainant until his case is concluded. If, in the course of the evidence, any question should arise as to the admissibility of any evidence, documentary or otherwise, each party should be at liberty to address the bench upon the subject, and the justices should then form their judgment upon the point.

CHAPTER XII.

CONCLUSION OF THE CASE OF THE COMPLAINANT—DUTIES OF JUSTICES THEREUPON—CASE OF DEFENDANT ADDRESSING THE BENCH—DUTY OF JUSTICES ON THE ASSERTION OF A CLAIM OF RIGHT—COMPROMISES AND ARRANGEMENTS BETWEEN LITIGANT PARTIES.

At the conclusion of the case of the complainant, the justices will consider whether or not any legal offence has been established; if they should be of opinion that none has been made out, they will at once dismiss the complaint, without calling upon the defendant for his defence; but if they are of opinion that a *prima facie* case has been established, they will then proceed to hear the defendant. The defendant, as we have seen, has a right to address the bench, either himself or by his counsel or attorney, and having so addressed them, he will either rely upon the insufficiency of the case, as intended to be established by the complainant, or he will attempt

Conclusion of the case of the complainant—Duty of justices thereupon—Case of defendant—Addressing the bench.

to answer it by positive testimony. He will, if he consider it necessary, and is enabled to do so, adduce his witnesses and examine them in the order he deems best; and the same rules will apply as to the course of proceeding relative to the evidence which he produces as those which obtain with regard to the evidence of the complainant. Should the defendant have produced witnesses, the complainant will have a right to rebut their evidence by evidence in reply; if, however, the defendant has called witnesses only to character, no right to adduce evidence in reply is permitted: (11 & 12 Vict. c. 43, s. 14.) However, neither party will again have a right to address the bench, the foregoing section restricting each party to one address only. This provision, as to restricting the right to address the bench more than once by each party, is a limitation upon the old practice, which was as follows:—"If the defendant called witnesses, the complainant would have a right to reply; but if he called witnesses in reply to the defendant's evidence, his reply would be postponed, and he would call his witnesses in reply immediately after the defendant had concluded his evidence—and upon the plaintiff's concluding his evidence in reply, the defendant had a right to address the bench upon such evidence in reply, and upon that alone; and immediately after the complainant had a right to address the bench upon the whole case." The latter course of proceeding will still be the proper one to be pursued in summary convictions *not* under this act—and they are many—for by sect. 35 of the before-mentioned act, the provisions of this statute (in reference to the present matters) do not apply to informations, complaints, or other proceedings under or by virtue of any of the statutes relating to the *Excise Customs, Stamps, or Post-office, matters of bastardy, and the labour of children in mills and*

factories, in all of which cases the old course of proceedings should be followed.

By sect. 16, ample powers are conferred on the justices as to adjourning the hearing of any information or complaint. If, therefore, for any reason they should think the ends of justice will be promoted by an adjournment, or it should be requested for a valid reason by either of the parties, and no prejudice to the case is likely to be sustained thereby, the justices should not hesitate to grant it. This, however, being a matter entirely within their own discretion, their sense of fairness will always dictate to them in what cases and under what restrictions an adjournment ought to be permitted.

Adjourn-
ments.

Before proceeding onward in the description of the ordinary and usual course of proceedings upon summary hearings, it will be proper for us to consider a few circumstances which occasionally arise to interrupt and arrest that course; and herein we will first refer to *the assertion of a claim of right*. It may be laid down as a general proposition, that whenever the defendant makes it appear that the act complained of was done in the assertion of a *bonâ fide* claim of right, the jurisdiction of the justices cease, and they should dismiss the complaint, leaving the complaining party to such other remedies as the law may have provided. In acting, however, upon any such assertion of right, they will consider not only whether the case is one in which, from its nature, a claim of right is at all admissible, or operates as a defence, but also whether or not the claim is made *bonâ fide* or is merely colourable; for if it be made in a case in which it is not applicable, or does not amount, even if true, to a legal defence, or is merely colourable, and without any reasonable foundation, the justices will disregard it, and proceed with the case. When, therefore (at whatever

Duty of
justices on
the assertion
of a claim of
right.

stage of the proceedings), the claim of right may be set up, it will be the duty of the justices to enter into the case, so far as to satisfy themselves that the claim is either substantial or unfounded; and in this investigation their object will be alone to ascertain that the claim of right is a reasonable one; not that such claim can be ultimately successfully sustained against the other side. Several cases have been decided upon this question, which will operate as safe guides in this very important part of the duties of justices. In *Rex v. Wrottesley* (1 B. & Ad. 648), a rule was obtained calling upon two justices to meet and examine into the complaint of James Jay, one of the churchwardens of the parish of Tisbury, against Rice Everett, an inhabitant of the parish, for refusing to pay the sum of 4*l.* 2*s.* 6*d.*, assessed upon him for the church rate. It appeared that Everett having refused payment, and being summoned before the justices, he appeared by his attorney, who stated that he disputed the validity of the rate, and that for the purpose of trying it a *caveat* had been entered in the Ecclesiastical Court against the confirmation of any church rate for the parish of Tisbury; he therefore contended that the justices had no jurisdiction, but he did not say on what grounds the rate was objected to. The *caveat* had in fact been entered before the justice-meeting. The magistrates, conceiving that their jurisdiction was taken away, dismissed the complaint without any examination upon oath, although the attorney offered to be sworn. The 53 Geo. 3, c. 127, s. 7, after giving justices power to hear complaints for the recovery of church rates under a certain amount, provides "that if the validity of such rate, or the liability of the person from whom it is demanded to pay the same be disputed, and the party disputing the same give notice thereof to the justices, the

justices shall forbear giving judgment thereupon, and the person or persons demanding the same may then proceed to the recovery of their demand, according to due course of law, as heretofore used and construed." Lord Tenterden, C.J., in delivering the judgment of the court, after referring to the statute, said, "A *mandamus* may issue commanding them to hear; when they have heard they will be able to say more of the case; but, at least, it will not come to this strange absurdity, that a man by merely saying, 'I dispute the validity of the rate,' shall put an end to the jurisdiction of the justices. If, upon the hearing, the party satisfies the justices that there is a *bonâ fide* intention to contest the rate, the proceedings before them will go no further." In *Reg. v. Dodson and others* (9 Ad. & Ell. 704), which was a rule for a criminal information against justices for corruptly, and against the statute (7 & 8 Geo. 4, c. 30) convicting a party who had set up a claim of right under sect. 24 of that statute, in delivering judgment, Lord Denman said, "we think that the justices undoubtedly had jurisdiction, because the proceeding was under sect. 24 of stat. 7 & 8 Geo. 4, c. 30, and not under sect. 20, and under sect. 24 damage, to the amount of only sixpence, warrants a summary conviction. As to the claim of right, the magistrates exercised their judgment, as they were entitled to do, and were of opinion that the act in question was not done in the *bonâ fide* exercise of what the party supposed to be his right." On the other hand, where they, upon investigation, find that the claim of right is *bonâ fide* made, and is in itself plausible, the justices should abstain from further proceeding: (see *Dale v. Pollard*, 10 Q. B. 504.) The class of cases in which a claim of right can be set up is necessarily small, and will for the most part be be confined to informations for trespass and

assaults, which will sometimes involve a question of a title to property; and whenever such a question is involved in the information, the justices should at once abstain from further proceeding, and leave the parties to arrange their claims or adjust their rights by some other course of proceeding, it having always been held as a maxim, as observed by Mr. Paley in his work on "Convictions," that where the title to property is in question, the exercise of a summary jurisdiction by justices of the peace is ousted.

Amicable arrangements.

At this stage of the proceedings, and indeed at any period before pronouncing judgment, it will be well for the justices to consider whether it will not be for the best interest of all parties that the dispute should be settled by an amicable arrangement. The right of the litigant parties to compromise, even after the subject-matter of complaint has been laid before the justices for determination, should never be lost sight of by the magistrates, who also should ever be ready to interpose their powerful influence to bring about such compromise in every case in which the law permits such a proceeding, and in which they consider that it will tend to harmony and future good conduct. The power of thus recommending parties not to push matters to extremities, but to settle their differences in a friendly manner—the complainant abating somewhat of his hostility, and the defendant making such a concession as an impartial party may think reasonable—is, perhaps, the noblest function appertaining to the office of a justice of the peace, and when exercised with an habitually benevolent and philanthropic spirit, does more to create respect for the office and esteem for the individual than all the coercive powers he possesses. Numberless cases will constantly arise in which a compromise, recommended and effected by the instrumentality of the presiding justice,

will produce that lasting harmony and good will between the contending parties, which penalties and punishments never can effect, and produce a respect for the law, and a resolution to observe for the future a good line of conduct, which are rarely the consequences of the infliction of pecuniary or personal punishment. Take the case of a complaint by a master against his servant under the 4 Geo. 4, c. 34, for a breach of his contract; the facts may present no features of an aggravated character, still the feeling between the parties may run high. Under that act the justices have power to imprison with hard labour for three months. If an example is imperatively required, they may think it prudent to carry out the strict letter of the law; but, in such a case, it is idle to expect that the defendant will ever look upon his master otherwise than with great aversion—as one who has been the cause of his degradation, and to whom he owes the greatest future hostility he is capable of entertaining. Should, however, an example not be called for in the particular case, what gratifying results may not flow from the benevolent recommendation of the magistrate, that further hostility should subside, and that, upon the defendant's promise of future good conduct, and his expression of his regret for his irregularity, (should he appear to have acted improperly), his master should overlook the fault and withdraw his complaint? The magistrate would explain the law to the defendant—his power to punish, and the obligation under which the defendant rests to his master for the withdrawal of the complaint; the master would leave the justice-room with the assurance that he had done that which would securely attach his servant to him, and who, by his future becoming conduct, would set a worthy example to all others in his employment; and the servant would feel that in

Amicable arrangements.

Amicable arrangements.

being thus kindly dealt by he has met with friends in those whom he was accustomed to look upon as his enemies, and would form resolutions of good conduct, which, whilst they would recommend him to the favour of his employers, would lastingly redound to his own credit and happiness. Imprisonment, whilst it almost invariably makes a bad man worse, too often makes him who is not really a bad, but probably a thoughtless man, thoroughly vicious. Hence the desirability of avoiding that punishment, if the ultimate purposes intended by the complaint can be effected by more gentle means, and hence the propriety of bringing about a friendly termination of the dispute in cases where it is likely that it will be followed by favourable results.

Some judgment, however, is required in discriminating between those cases in which a compromise may lawfully take place, and those in which it may not. In cases in which it *may* take place, the justices will readily perceive whether or not an amicable settlement would be advisable. They have, of course, no power to *compel* an arrangement, and if either party should refuse to accede to a proposed accommodation, and insist upon an adjudication, the magistrates will have no course to take than that pointed out by the law applicable to the particular case.

What, then, are the cases in which an arrangement or compromise may be permitted and is sanctioned by the law? They consist in general terms of *all those offences which involve damages to an injured party for which he may maintain an action*; and indeed, *all cases determinable upon summary conviction, provided they be not of a public nature*. Thus, common assaults, disputes between master and servant, master and apprentice, trespasses, and the like, in which the mischief is confined to the complainant and does not involve the interests of

the public, or compromise the public peace, may lawfully be compromised; but felonies and misdemeanors which affect the public welfare cannot be compromised, not merely because there is a statutable prohibition against compounding a felony, but because it is a rule of law that whatever concerns the safety or security of the public shall not be the subject of a private compromise, it being the duty of every person who has been injured by the felonious conduct of another, to bring the party to the bar of public justice. Upon this principle, although it would be lawful for A. to sue B., who unjustly detains his horse, yet if B. has obtained the horse under such circumstances as amount to a felony, the right of action of A. is at an end, his civil remedy having merged into the felony which it is his duty, as one of the general public, to prosecute. So again, although a master may sue his agent for the money of the former remaining in the hands of the latter, yet if the agent be the clerk or servant of the master, and has obtained and retained the money under such circumstances as will amount to an embezzlement, his civil remedy in like manner is merged in the felony. In instances, such as the above, few people are likely to fall into the error of supposing that it is lawful to enter into a compromise, though our legal reports certainly contain very many cases in which securities have been held to be void, where they have been given as the condition of withdrawing, or not prosecuting, an inquiry into a charge of a felonious character. The difficulty which sometimes arises is, where the charge is not felonious, but merely involves a public breach of the peace. Upon this subject, much learning was exhibited, and a vast deal of discussion took place in the recent case of *Kier v. Leeman*, which was argued twice—once in the Queen's Bench, and afterwards upon a writ of error in

Amicable arrangements.

Amicable arrangements. the Exchequer Chamber—when the judgment of the court below was affirmed.

The case of *Kier v. Leeman*, reported in 6 Q. B. 308, and 13 L. J. 259, Q. B., is the only one directly upon the point to be found in the books; but from the great deliberation given to it, and the re-arguing of it in the Exchequer Chamber, is a complete and guiding authority. The facts of that case were these:—Kier having recovered judgment in an action against one George Emmitt, he sued out a *fi. fa.* which was executed on a farm and messuage. To these premises one William Emmitt claimed title under an assignment, and he thereupon, with others, forcibly expelled the officer and his followers; the officer upon this, with necessary force, re-entered and retained possession. After this the said William Emmitt commenced an action against the sheriff, in which the validity of the assignment came in question, and at the trial the sheriff obtained a verdict. It appeared that, whilst the action was pending, an indictment against William Emmitt and the others had been preferred for ejecting the officer, which indictment contained counts for *riotously* assembling to disturb the public peace, and assaulting the officer and his followers in the execution of their duty; and this indictment, in the ordinary course of the proceeding, would have come on for trial shortly after the determination of the action, but the verdict in the action having virtually decided the merits of the indictment, it was arranged (with the approbation of the presiding judge) that, in consideration of the prosecutor of the indictment not proceeding further, and of the sheriff's withdrawing from possession, the defendants undertook and promised to pay Kier, on a certain day, the balance of the principal money and costs in the original action, and the costs of the execution. Upon this, the prosecutor

Amicable arrangements.

declined to offer any evidence upon the indictment, and the defendants were acquitted. The money agreed to be paid not being paid at the appointed time, the present action was brought upon the undertaking, to which action the defendant pleaded that the consideration for the promise was the foregoing to prosecute an indictment for a riot and assault upon a sheriff's officer in the execution of his duty, with intent to resist, &c., and that the promise, therefore, was illegal and void. To this the plaintiff demurred, whereupon the case came on for argument. The question was most elaborately argued, and the judges took time to consider their judgment, which was ultimately delivered by Lord Denman, the material part of which is as follows: "We shall probably be safe," says his lordship, "in laying it down that *the law will permit a compromise of all offences, though made the subject of a criminal prosecution, for which offences the injured party might sue and recover damages in an action.* It is often the only manner in which he can obtain redress. *But, if the offence is of a public nature, no agreement can be valid that is framed on the consideration of stifling a prosecution for it.*" His lordship then proceeds upon other points, and then observes: "In the present instance, the offence is not confined to personal injury, but is accompanied with *riot and obstruction of a public officer in the execution of his duty. These are matters of public concern, and, therefore, not legally the subject of a compromise.*" The demurrer, therefore, was overruled.

This case was afterwards taken by writ of error to the Court of Exchequer Chamber, and is reported as *Kier v. Leeman* (9 Q. B. 577, also 15 Law J. 360, Q. B.); whereupon the judgment of the Queen's Bench was affirmed, Tindal, C. J., in delivering the judgment of the court saying,

Amicable arrangements.

"We have no doubt that, in all offences which involve damages to an injured party for which he may maintain an action, it is competent for him, notwithstanding they are also of a public nature, to compromise or settle his private damage in any way he may think fit. It is said, indeed, that in the case of an assault he may also undertake not to prosecute on behalf of the public. It may be so, but we are not disposed to extend this any further. In the case before us, the offence is an assault, coupled with a riot and the obstruction of a public officer; no case has said that it is lawful to compromise such an offence."

With the law so clearly and intelligibly laid down as we have it in the above cases, justices will have little difficulty in determining when a compromise may or may not take place between the parties.

CHAPTER XIII.

THE JUDGMENT—CONVICTING DEFENDANT— JUDGMENT FOR DEFENDANT, &c.

The judgment—Mode of pronouncing it.

THE case being closed on both sides, the justices will proceed to consider their judgment. In the performance of this part of their duties, the magistrates will properly consider themselves in the position of a jury in a criminal case, giving the defendant the benefit of all reasonable doubts which may exist as to his culpability. Unanimity of all the justices is not, however, required—a mere majority being all that the law enjoins in this form of procedure. It need scarcely be

observed that only those justices who have heard the entire case should assist in the judgment, and herein all the justices have equal authority—no casting or double vote being permitted to the chairman. In the event of the magistrates being equally divided in opinion for and against a conviction, it will be competent to them to adjourn the hearing of the case to some other day, and to call for the assistance of other justices, should there be any who have not already attended, and then to rehear the complaint; or being, for the above reason, unable to pronounce judgment, they might cause a minute of the fact to be entered, and dismiss the complaint thereupon, whereby the complainant will be at liberty to renew his information. It may be here observed, that during the deliberations of the magistrates it will be quite competent to them to direct the apartment in which the hearing takes place to be perfectly cleared, or they can themselves retire for consideration into some other apartment; but it must not be forgotten that, inasmuch as the room in which the hearing takes place is, for the time being, a public court of justice, no judicial act can take place in private, or in the absence of those who are interested in the proceeding and desire to be present.

The judgment.

Supposing that the justices have agreed upon their judgment, the chairman or chief magistrate will proceed to deliver it. Upon this head, the 11 & 12 Vict. c. 43, s. 14, contains some instructions. This section, after providing for the course of proceeding upon the hearing says,

And the said justice or justices having heard what each party shall have to say as aforesaid, and the witnesses and evidence so adduced, shall consider the whole matter and determine the same, and shall convict or make an order upon the defendant, or dismiss the information or complaint as the case may be; and if he or they convict or make an order against the defen-

dant, a minute or memorandum thereof shall then be made, for which no fee shall be paid, and the conviction or order shall afterwards be drawn up by the said justice or justices in proper form, under his or their hand and seal, or hands and seals; and he or they shall cause the same to be lodged with the clerk of the peace, to be by him filed among the records of the General Quarter Sessions of the Peace; or, if the said justice or justices shall dismiss such information or complaint, it shall be lawful for such justice or justices, if he or they shall think fit, being required to do so, to make an order of dismissal of the same, and shall give the defendant in that behalf a certificate thereof, which said certificate afterwards, upon being produced without further proof, shall be a bar to any subsequent information or complaint, for the same matters respectively against the same party.

Of convicting
the defen-
dant and
awarding the
penalty.

If the justices have determined upon convicting the defendant, they will do well carefully to examine the statute upon which the proceedings are founded, in order that the statutable provisions with reference to this most important part of the proceedings be strictly complied with. No general rule can be laid down for the guidance of justices beyond that of observing most accurately the provisions of the Legislature in the particular case. In this matter, with reference to the extent and peculiarity of their powers, the justices, if in any doubt themselves, will do well to seek the advice of their clerk, whose proper function it is to inform them upon all points of practice and law when his assistance thereupon is in anywise required. It will at once strike every justice that no portion of his duties is of more consequence or capable of being followed by results of more serious magnitude to himself as well as to others, than that of pronouncing judgment against the defendant, since any error in the affixing of a wrong penalty, or in the misapplication or excess of a penalty, may ultimately involve him in an action at the suit of the defendant: (see *Reg. v. Barton*, 18 L. J. M. C., 56; 3 New Mag. Cas. 101, 106; 3 New Sess Cas. 470; *Ex parte Hyde*, 20 L. J.

M. C ; 3 New Mag. Cas. 130 ; 4 New Sess. Cas. 745.

Should the justices determine upon pronouncing their decisions in favour of the defendant, they give effect to their intention by dismissing the information or complaint, and in such a case, if they think it right to do so, with the view of stopping any further litigation upon the same question, they may, on the application of the defendant, give him a certificate of dismissal, according to the form prescribed by sect. 14, schedule (M.), which certificate will be a bar to any subsequent information or complaint for the same matters against him. If the justices think the case a proper one for granting such certificate, it will be right for them to call the attention of the defendant to their willingness to grant it ; and as there are no words restricting the grant of the certificate to the time of the hearing, it would appear to be competent to them to grant it at a subsequent period ; there will, however, be this difficulty, consequent upon not granting it at the time, namely, the same justices may not be to be met with together, and even if they are, they may not remember the circumstances of the case sufficiently well to judge of the propriety of granting or withholding it.

Of giving judgment for the defendant and granting certificate of dismissal.

Should the justices convict, and the statute under which they have acted give a right of appeal, it will be proper in them, if the defendant be not assisted professionally, to inform him of such right.

Right of appeal.

As regards the question of costs, the Legislature has given the justices full and satisfactory powers to award to either party (being successful) such costs as they may think reasonable. Upon this head, sects. 18 and 26 of the 11 & 12 Vict. c. 43, contain ample information.

Costs.

It will often occur that, upon the hearing of a complaint with a view to a summary conviction, justices when

The proceedings of justices when

the charge turns out to be one fit for trial by a jury.

the evidence makes out a case fit and proper for the decision of a jury—when this is the fact, the justices should abstain from dealing summarily with the defendant, and should commit him for trial to the sessions or assizes, according to the nature of the evidence, taking care, however, that their proceedings are rendered conformable to the course of procedure directed in cases of hearing, with the view to a committal for trial. In cases of hearing with a view to a summary conviction for an assault, it may transpire in the course of the evidence that it was committed with a felonious intention—such as to commit a rape, abominable offence, grievous bodily harm, or to murder; in any of which cases it will be the duty of the justices to send the case before a jury, but so shaping their course of proceeding with reference to the depositions of the witnesses, and the calling upon the defendant for his defence that no formal difficulty shall afterwards occur. So, too, in cases in which the justices may properly adjudicate, if they think the case one in which a higher example is fitting to be made, as where the assault is upon an officer of justice, or of an aggravated nature under the 14 & 15 Vict. c. 14, s. 4, they will do well to commit to the sessions or assizes.

Adjournments.

Should the complainant, from the injuries he has received from the defendant, be too ill to attend the hearing, it will, of course, be competent to the justices to remand the party from time to time until the injured person is able to be present; or his evidence may be taken at his own residence, care being taken that the defendant is present.

Formal proceedings of drawing up, &c., other conviction.

As regards the formal proceedings of making minutes of the proceedings, drawing up and returning the conviction—as these properly appertain to the duties of the justices' clerk, no particular reference need here be made to them.

Before dismissing this branch of the subject, it will be well to call attention to the powers recently conferred upon justices of directing a prosecution for perjury committed before them. The statute which confers this power is the 14 & 15 Vict. c. 100, the 19th section of which from its great importance, and the minute directions it contains, we give entire. After reciting the 23 Geo. 2, c. 11, and the 31 Geo. 3, c. 1, and that it is expedient that they should be amended, it is enacted :

That it shall and may be lawful for the judges or judge of any of the Superior Courts of common law or equity, or for any of Her Majesty's justices or commissioners of assize, nisi prius, oyer and terminer, or gaol delivery, or for any justices of the peace, recorder or deputy recorder, chairman or other judge, holding any general or quarter sessions of the peace, or for any commissioner of bankruptcy or insolvency, or for any judge or deputy judge of any County Court or any Court of Record, or for any justices of the peace in special or petty sessions, or for any sheriff or his lawful deputy before whom any writ of inquiry or writ of trial from any of the Superior Courts shall be executed, in case it shall appear to him or them that any person has been guilty of wilful and corrupt perjury in any evidence given, or in any affidavit, deposition, examination, answer, or other proceeding made or taken before him or them, to direct such person to be prosecuted for such perjury, in case there shall appear to him or them a reasonable cause for such prosecution, and to commit such person so directed to be prosecuted unt'l the next session of oyer and terminer or gaol delivery for the county or other district within which such perjury was committed, unless such person shall enter into a recognizance, with one or more sufficient surety or sureties, conditioned for the appearance of such person at such next session of oyer and terminer or gaol delivery, and that he will then surrender and take his trial, and not depart the court without leave, and to require any person he or they may think fit to enter into a recognizance, conditioned to prosecute or give evidence against such person so directed to be prosecuted as aforesaid, and to give to the party so bound to prosecute a certificate of the same being directed, which certificate shall be given without any fee or charge, and shall be sufficient proof of such prosecution having been directed as aforesaid; and upon the production thereof the costs of such prosecution shall and are hereby required to be allowed by the court before which any person shall be prosecuted or tried in pursuance of such

direction as aforesaid, unless such last-mentioned court shall specially otherwise direct ; and when allowed by any such court in Ireland such sum as shall be so allowed shall be ordered by the said court to be paid to the prosecutor by the treasurer of the county in which such offence shall be alleged to have been committed, and the same shall be presented for, raised, and levied in the same manner as the expenses of prosecutions for felonies are now presented for, raised, and levied in Ireland: provided always, that no such direction or certificate shall be given in evidence upon any trial to be had against any person upon a prosecution so directed as aforesaid.

CHAPTER XIV.

JUVENILE OFFENDERS—RULES OF LAW APPLICABLE TO OFFENCES COMMITTED BY INFANTS—THE 10 & 11 VICT. c. 82 AND 13 VICT. c. 37—TO WHAT CASES ACTS APPLY—THE AGE OF THE ACCUSED—CONVICTION TO BE BEFORE TWO JUSTICES—PROCEEDINGS IN OPEN COURT—THE PUNISHMENT, WHIPPING, &c.—DISMISSING CHARGE, CERTIFICATE, &c.—RIGHT OF THE ACCUSED TO BE TRIED BY A JURY.

BEFORE quitting the subject of summary convictions, it will be well to draw attention to a new and very important addition which has been recently made to the duties of justices under this head: namely, to those under the Juvenile Offenders Acts, the 10 & 11 Vict. c. 82, and the 13 Vict. c. 37.

Without at all calling into question the policy of the Legislature, which, in a numerous class of offences, dispenses by the above acts with the ancient and much-honoured mode of trial—that by jury—we cannot but observe that there is very much in these acts of Parliament requiring the most jealous attention of those by whom they are to be administered, since many of those

wholesome rules, by which the law was guided in its application to young children, appear to be wholly overlooked by the framers of these enactments.

Before entering into the particulars of these statutes, it will be judicious to state the rules of law which have long been applied to the conduct of children when made the subject of criminal investigation, the principal of which is, that children under the age of discretion are not punishable by any criminal prosecution whatever; that age, however, varying to a certain extent according to circumstances. Under the age of seven years no child can be punished for any offence whatever, being by presumption of law not endowed with any sufficient discretion to be made answerable for crime; but this legal incapacity ceases at the age of fourteen, the party being at that period of life presumed to have discretion sufficient to judge accurately between good and evil; and at this age, therefore, children are equally liable with those of perfectly ripe years, to all the pains and penalties of their guilty conduct. However, between the ages of seven and fourteen the rule of law is a fluctuating one, and no well defined line can be drawn between a child's responsibility and irresponsibility for its acts. Between these ages the presumption of law is in the child's favour, being still deemed, in legal phraseology, *doli incapax*; a presumption, however, which may be rebutted by evidence of a mischievous discretion, the capacity to do evil and contract guilt being to be measured not so much by years as by the strength of the child's understanding and judgment, and upon this principle many children under fourteen years of age have been capitally punished; but in all cases where it is intended to rebut the presumption of law from the fact of non-age by evidence of a vicious discretion, that evidence

Rules of law
applicable to
offences
committed
by infants.

should be clear and strong. In one case (*Rex v. Owen*, 4 Car. & Pay. 236) Mr. Justice Littledale laid it down that, in the case of a child under fourteen years of age, two questions should be left to the jury : first, whether he committed the offence ; and, secondly, whether at the time he had a guilty knowledge that he was doing wrong. In some of the old authorities it is laid down that an infant cannot be convicted on his own confession, but the facts must be inquired into ; and there seems to be very good sense in this, for if the infant is in presumption of law not of sufficient discretion to judge between good and evil, what is the value of his assertion of his guilt ? However, in modern times this doctrine is never acted upon ; and under the acts of Parliament to which we are about to draw particular attention, it is expressly enacted that the child may be convicted upon his own confession. Still these considerations will weigh strongly with the justices in not too readily acting upon a confession of guilt without strictly examining into the facts of the case.

Bearing in mind these general rules, which apply with equal force to summary proceedings as to trials before a jury, we will proceed to consider the two acts to which we have before adverted.

The 10 & 11
Vict. c. 82,
and 18 Vict.
c. 27—con-
struction of.

The first act (the 10 & 11 Vict. c. 82) declares that—

Every person who shall subsequently to the passing of this act be charged with having committed or having attempted to commit, or with having been an aider, abettor, counsellor, or procurer in the commission of any offence which now is or hereafter shall or may be by law deemed or declared to be simple larceny, or punishable as simple larceny, and whose age at the period of the commission or attempted commission of such offence shall not, in the opinion of the justices before whom he or she shall be brought or appear as hereinafter mentioned, exceed the age of fourteen years shall, upon conviction thereof upon his own confession, or upon proof before any two justices of the peace for any county, riding, division, borough, liberty, or place in petty sessions assembled

at the usual place and in open court, be committed to the common gaol or house of correction within the jurisdiction of such justices, there to be imprisoned with or without hard labour for any term not exceeding three calendar months, or in the discretion of such justices shall forfeit and pay such sum not exceeding three pounds as the said justices shall adjudge, or if a male shall be once privately whipped, either instead of or in addition to such imprisonment or imprisonment with hard labour, and the said justices shall from time to time appoint some fit and proper person, being a constable, to inflict the said punishment of whipping when so ordered to be inflicted out of prison.

We will here pause to consider individually To what cases acts apply. each provision of this portion of the section, and it will be observed, first, that the classes of cases to which the enactment applies are those only of *simple larceny*, or those *punishable as simple larceny*. Stealing as a servant, or from the person, inasmuch as they are not cases of simple larceny, or punishable as such, are not within the provisions of the act.

The *age* of the party is not to exceed *fourteen* The age of the accused *years*, which period, by the subsequent statute of the 13 Vict. c. 37, is extended to *sixteen years*; proof, however, of the real age is not necessary in order to give the justices jurisdiction, it being merely necessary that the age of the party *shall not, in the opinion of the justices*, exceed sixteen years. If, indeed, actual proof of the party being above that age should be adduced, it will be the duty of the justices not to proceed under these statutes, the words of them merely intending to dispense with strict proof in order to give jurisdiction, but not intending to give it in spite of such proof.

The conviction is to be before two justices at least, and may be either upon the party's own confession, or upon proof. Upon these latter points, we have, in the earlier part of these observations, made some remarks. Conviction to be before two justices.

The proceedings are to be had at the usual place, and in open court—that is to say, the place Proceedings to be had in open court.

where the inquiry is to take place is to be the usual one where the justices meet to transact their business, and to be open to the public as in all other cases of summary conviction; and it may be here added that all the ordinary rights of a party charged upon a summary complaint, such as that of having the assistance of counsel and attorney, will attach.

The punishment,
whipping,
&c.

The descriptions of punishment are threefold; first, imprisonment, with or without hard labour, for any time not exceeding three calendar months; secondly, a fine not exceeding three pounds; or, thirdly, if a male, one private whipping either instead of, or in addition to, such imprisonment. It will thus be seen that the two punishments of fine and imprisonment cannot both be inflicted upon the same offender, but that the punishment of whipping may be inflicted either in addition to the imprisonment (with or without hard labour), or it may be inflicted alone; and that the justices are to appoint some fit constable to inflict the whipping when ordered to be inflicted out of prison—that is, when inflicted alone. In cases, however, of the culprit being above fourteen years of age, the power to order whipping is expressly taken away by the 13 Vict. c. 37, s. 1, which enacts, “that nothing herein contained shall authorize or empower any justice or justices to order the punishment of whipping to be inflicted upon any offender whose age shall exceed the age of fourteen years.

Dismissing
charge—
certificate,
&c.

The remainder of the first section of the 10 & 11 Vict. c. 82, provides,

That if such justices, upon the hearing of any such case shall deem the offence not to be proved, or that it is not expedient to inflict any punishment, they shall dismiss the party charged on finding surety or sureties for his future good behaviour, or without such sureties, and then make out and deliver to the party charged a certificate under the hands of such justices, stating the fact of such dismissal; and such certificate shall and may be in the form or to the effect set forth in

the schedule hereunto annexed in that behalf: provided also that if such justices shall be of opinion, before the person charged shall have made his or her defence, that the charge is from any circumstances a fit subject for prosecution by indictment, or if the person charged shall upon being called upon to answer the charge object to the case being summarily disposed of under the provisions of this act, such justices shall, instead of summarily adjudicating thereupon, deal with the case in all respects as if this act had not been passed.

The powers given to the justices, under the first of the above provisoes, of dismissing a case where they think it not desirable to inflict any punishment, are most beneficial; for cases will frequently occur where the facts may be clear against the accused party, in which, nevertheless, there may be such circumstances as may render the awarding of even the smallest amount of punishment an act of apparent severity; a reprimand, a few words of caution for the future, or a little wholesome advice given to the parents, may frequently answer the very best of purposes. The certificate by section 3 of the 10 & 11 Vict. c. 82, is a release from all further or other proceedings for the same cause, as is also the being convicted under the act.

The concluding words of the section are now superseded by the provisions of the second section of the 13 Vict. c. 37, which enact—

Right of the accused to be tried by a jury.

That one of the justices before whom any person shall be charged and proceeded against under this act or the hereinbefore mentioned acts, before such person shall be asked whether he or she has any cause to show why he or she should not be convicted, shall say to the person so charged these words or words to the like effect:—"We shall have to hear what you wish to say in answer to the charge against you, but if you wish the charge to be tried by a jury, you must object now to our deciding upon it at once;" and if such person or a parent of such person shall object, the justices shall proceed with the charge as if the said acts had not been passed.

This section, it will be perceived, gives the party charged a choice as to whether or not he will have the case dealt with summarily, and if

either he himself, or one of his parents, shall object to the summary power, the case will be gone into as all other cases of examinations with a view to a committal to trial.

In conclusion, it may be remarked that in all cases it is discretionary with the justices, if they see sufficient reason, to commit to trial instead of acting summarily, but that they must come to their determination before the person charged shall have made his defence.

CHAPTER XV.

OF CERTAIN MISCELLANEOUS DUTIES OF JUSTICES OUT OF SESSIONS—OF SURETIES TO KEEP THE PEACE AND BE OF GOOD BEHAVIOUR.

THE duties of justices of the peace, which we have described in most of the former pages of this work, though amongst many of the highest and most regular that attach to their office, form only a small proportion of those with which in the course of their ministry they have to deal. To describe these even casually would be a task of labour, and to enter deeply into them would swell these pages to a size utterly at variance with their design and purposed utility. Thoroughly to comprehend the varied and ever increasing functions of a justice of the peace the pages of Burn's Justice must alone be referred to, and even then no magistrate can hope so completely to have mastered his manifold duties as to be enabled to dispense with that voluminous and essential compilation of magisterial law. Nay, so numerous, varied, and often intricate

and obscure are the duties of justices of the peace, as set forth in our statute law, that not even the most studious, astute, and diligent justice can for an instant be warranted in the belief that a great proportion of them will not be a stranger to his imagination, until the moment arises when he is imperatively called upon to direct his especial attention to them for immediate application to some given case. Under such circumstances it would be idle to attempt a detailed description. Burn's Justice must in such cases be consulted, and with the principles of justice and its administration firmly impressed upon his mind, and the assistance of an active and able clerk, multitudinous as his duties may be, an intelligent justice will find little difficulty in steering a straight course in whatsoever direction it may be necessary it should proceed.

The golden rule in all cases in which a justice is called upon to act is, to consult the statute or statutes bearing upon the subject. The first question a justice should ask upon being applied to to interfere in any given case is, "*under what authority do you require me to act?*" and, having received a suitable reply, he should then consult that authority, or such other as he may think or is given to understand bears upon the question, and carefully guide his proceeding by the enactments or judicial decisions as they may present themselves for his instruction. By thus acting, and taking advice of his proper official adviser, no justice, however new the subject may be to him, should feel alarmed by its novelty or apparent difficulty. Burn's Justice, in its bulky shape of six plethoric volumes, is, indeed, a formidable library of law in itself; but in it there are some thousand or so of pages into which no justice has ever any occasion to look; some thousands more are applicable to laws to be administered alone in particular localities,

whilst it will hardly ever occur that a justice will be required to direct his attention, on any one day, to more than three or four sections in any act of Parliament, upon any given subject. These considerations will go far to dispel those apprehensions which the extreme bulk of the work to which we have before alluded is so well calculated to excite.

It being beyond the purpose of these pages to instruct the justice upon the various heads of law, to which in the course of his judicial career he will have occasion to direct his attention,—our object being confined to the consideration of his duties, rights, and liabilities, giving rather the practical method of his going through his functions than discoursing upon the law he will have to administer,—we shall abstain from pointing out in detail the numerous occasions and the matters upon which he may be called upon to act. There are, however, certain practical matters of frequent occurrence which, from their great importance and daily application, deserve to be selected and set apart from the great body of subjects of a general nature over which the justices have jurisdiction, and to these we shall, as briefly as convenient, direct special application : and first, of *sureties to keep the peace, and be of good behaviour*.

Of sureties
to keep the
peace.

The power to compel a person to enter into a recognizance, with or without sureties, to keep the peace towards another, whom he may have threatened with some bodily harm, is one of the most useful which a justice possesses. It is, however, only when some bodily injury has been threatened, either by words or conduct (or that his house will be fired), that sureties of the peace can be demanded, and it is for the justice to satisfy himself that the words or conduct amount to such threat.

Preferring
articles of
the peace.

If, therefore, a party who thinks himself en-

titled to prefer articles of the peace against another come before a justice for that purpose, he will be required to have his complaint reduced to writing upon parchment, and upon oath. In corroboration of the facts mentioned in the articles, the affidavits of others may be used, and the justice himself ought to be satisfied that the articles are not preferred from malice or vexation.

When the articles are sworn to, if the defendant be present he should be required at once to enter into recognizance, but if he be absent, a warrant may issue for his apprehension, and on his being brought up he will be informed of the nature of the proceedings, and will hear the articles read. It is not competent to the defendant to dispute the truth of the facts set out upon the face of the articles. If the articles be untrue the complainant may be indicted for perjury, or may be subject to an action on the case, but no contradiction at the time can be permitted. The only resistance which is permitted is by showing *direct evidence of express malice*, such as declarations to that effect, and if this be shown the justice should not call upon the defendant to enter into any recognizance. If, however, express malice is not proved, the defendant should be called upon to enter into the required recognizance to keep the peace towards the applicant.

Bringing the defendant before the court.

The number of the sureties, the amount of recognizance, and the time for which they are to be taken, will be entirely in the discretion of the justice, and his discretion herein will be guided chiefly by the nature of the charge, the position, means, and character of the defendant. It is not an unusual course, and indeed has often been recommended as the most preferable, to bind the defendant, with his sureties to appear at the next quarter sessions, and keep the peace in the meantime, there to be dealt with by the sessions. It is usual to require the defendant to enter into

Number of sureties—
Amount—
Time.

his own recognizance with two sureties. The amount, of course, will vary according to circumstances ; in very ordinary cases the party being bound himself in 20*l.* and two sureties in 10*l.* each. The time for which a party may be bound will also be dependent upon circumstances. It may be until the next sessions, to be further dealt with ; or it may be absolutely to keep the peace for a few months, or one or two years, or more. The justices, however, should be careful not to extend the time to an unnecessary period, since they thereby throw great difficulty in his way of getting sureties, and place the party under a restraint, which, although of a harmless nature in itself, is still a restraint abhorrent to that liberty and freedom of the subject which is one of the boasted rights of the people of this country.

Defendant
not
appearing.

If the defendant be not present when the articles are exhibited, the proper course will be to issue a warrant for his apprehension. Upon his being taken, he should be brought up before the justice, and required to enter into recognizance in such amount, and for such a time, and with such sureties, as may be determined upon by the justice. If he comply, he and his sureties will bind themselves in their respective recognizances, and he will be discharged. If he decline to do so, it will be the duty of the justice to commit him to prison for such a period as the recognizance shall extend over, unless he sooner enter into the recognizances.

Surety for
good
behaviour.

The power of justices to call upon parties to enter into recognizance with sureties *to be of good behaviour*, is similar in very many respects to that of calling upon them to enter into recognizance to keep the peace, and differs chiefly in this, that whereas the latter has reference to some complaint of an individual of a fear of bodily injury, the former is founded upon some

unlawful designs, or some course of conduct not immediately having reference to the well-being of any particular individual. The recognizances will be similar to those for the peace, and the occasions where the justice ought to take such recognizance will be easily ascertained by a reference to appropriate heads in Burn's Justice. It may here be observed that when the recognizances are taken they should be transmitted to the sessions ; and also, with reference to the sureties under these heads, as indeed in all cases of sureties and bail, it ought not to be forgotten that bail or sureties ought never to be rejected merely on account of their personal character or opinions, if they are otherwise sufficient : (*Reg. v. Badger*, 4 Q. B. 468.)

CHAPTER XVI.

THE DUTIES OF JUSTICES UNDER THE HIGHWAY ACT, 5 & 6 WILL. 4, c. 50—SPECIAL SESSIONS—DIVIDING HIGHWAY—GETTING MATERIALS FROM PRIVATE LANDS—STOPPING UP AND DIVERTING HIGHWAYS—HIGHWAYS OUT OF REPAIR—WHEN OBLIGATION TO REPAIR NOT DISPUTED—WHEN IT IS DISPUTED—APPLYING HIGHWAY-RATE TO REPAIR OF TURNPIKE ROAD.

THERE is perhaps, no act of Parliament which imposes more numerous and varied duties upon justices of the peace than the General Highway Act—the 5 & 6 Will. 4, c. 50, entitled *An Act to consolidate and amend the Laws relating to Highways in that Part of Great Britain called England*. Extensive in its purposes, comprehensive in its provisions, and actively operating hourly in all parts of England, this useful act of

Parliament calls for the superintending care and energetic administration of the justices, upon occasions as numerous as their duties are varied. In an act of the Legislature, the purpose of which is to secure to the public the means of safe and convenient transit from place to place, and that, too, along roads open at all times to all the world, penalties in restraint of acts having a tendency to interfere with so desirable an object must needs be numerous and summary—hence we have in this act a body of offences, and with appropriate punishment, numerous in themselves, but not more numerous than is necessary to protect the public in a matter so deeply affecting their well being as a social body.

It is not, however, to the ordinary offences and penalties as set forth in this statute, which, for the most part differ but little, if at all, from the common run of offences punishable upon summary conviction, but to those peculiar and unusual duties which, under this act of Parliament, justices of the peace are called upon to perform, and to those alone, that we purpose to advert. And first, it will be right to observe that—

When special sessions for highway to be held.

By the 5 & 6 Will. 4, c. 50, s. 45, the justices within their respective divisions, or any two or more of them, are required to hold not less than eight nor more than twelve special sessions in every year, for executing the purposes of the act, the days of holding which are to be appointed at a special sessions to be held within fourteen days after the twentieth of March in every year.

Power to divide highway in certain cases for purposes of repair.

It will sometimes occur that the boundaries of two parishes will pass across or through the middle of a highway, and that one side of the highway is situate in one parish and the other side in another, and thus it becomes a question

how and by which parish the repairs are to be effected. To remedy this difficulty the 58th section gives the justices power to divide the highway by a transverse line crossing the highway in such parts or proportions as according to circumstances they shall think right, and they are to adjudge that such parts on each side shall be maintained by one of each said parishes. The mode of effecting this is fully and clearly set out in the section.

The mode and means of obtaining materials for the repair of the roads also frequently give rise to difficulties. If the surveyor think it necessary to obtain such material from any enclosed land or ground, he cannot do so without giving to the owner and occupier a month's written notice, to appear before the justices at a special sessions for highways, to show cause why such materials should not be had therefrom; and if being served they shall not attend, or do attend, but do not show sufficient cause, the justices may, if they think proper, authorize the surveyor to dig, get, gather, take, and carry away such materials, at such time or times as to such justices shall seem proper: (sect. 53.) By the 4 & 5 Vict. c. 31, an extended interpretation is given to the words "enclosed land or ground," and by sect. 54 of the 5 & 6 Will. 4, c. 50, the justices, under the restriction therein contained, are empowered, under certain circumstances, to grant the surveyor a licence to search for, dig, and get materials from an adjoining parish.

As to getting materials for repairs from private lands.

Frequently, it will occur that the public convenience requires that a highway or a portion of it should be stopped up or diverted, and a new road formed in its stead; where that is the case the justices of the division have an important duty to perform, as we shall presently see. By sect. 84 of the 5 & 6 Will. 4, c. 50, when the inhabitants in vestry deem it expedient that any

Stopping up and diverting highways.

Dividing
highways.

highway should be stopped up, diverted, or turned, either entirely or reserving a sideway or footway, the chairman is to direct in writing the surveyor to apply to two justices to view the same, &c.; and then provision is made where the stopping up or diverting is, in the first instance, at the desire of an individual. The 85th section then prescribes the duties of the justices upon the before-mentioned application being made to them; the words of the clause are, "That when it shall appear upon such view of such two justices of the peace, made at the request of the said surveyor as aforesaid, that any public highway may be diverted and turned, either entirely or subject as aforesaid, so as to make the same nearer or more commodious to the public, and the owner of the lands or grounds through which such new highway so proposed to be made shall consent thereto by writing under his hand, or if it shall appear upon such view that any public highway is unnecessary, the said justices shall direct the surveyor to give certain notices as in the section specified, and the said several notices having been so published, and proof thereof having been given to the satisfaction of the said justices, and a plan having been delivered to them at the same time particularly describing the old and the proposed new highway by metes, bounds and admeasurement thereof, which plan shall be verified by some competent surveyor, the said justices shall proceed to certify under their hands the fact of their having viewed the said highway as aforesaid, and that the proposed new highway is nearer or more commodious to the public, and if nearer, the said certificate shall state the number of yards or feet it is nearer, or, if more commodious, the reasons why it is so, and the certificate is to be at once lodged with the clerk of the peace at the quarter sessions, to be read by him in open court, and, together with

the proof and plan as before mentioned, as well as the consent in writing of the owner of the land through which the new highway is proposed to be made, is to be enrolled amongst the records of the said Court of Quarter Sessions."

It will be obvious, from the foregoing, that the duties of justices upon this subject are of a highly important nature, since the quarter sessions, by whose decision it is that the old highway is to be stopped up or diverted, act entirely upon the certificate of the two justices, and rely upon them for the perfect truth and accuracy of the facts stated in such certificate. In the first instance, therefore, upon the application of the surveyor to two justices, they should satisfy themselves that he is armed with the proper authority to make the application, and that they are the proper justices to whom such application should be made, namely, justices of the petty sessional division within which the parish is situated. Upon being satisfied upon these points the two justices should agree with themselves at what time they will make the view, taking care no time is unnecessarily lost, since their certificate will have to be returned to the quarter sessions before it can be acted upon, and many notices have to be given, and being a single day too late for the next sessions will entail a loss of three months. They should arrange also for the attendance of the surveyor, to point out and explain the motives, advantages, and peculiarities of the intended alteration. The two justices should attend together to have the view, and come to their finding immediately upon it. Under the former act of the 55 Geo. 3, c. 68, s. 2 (which contained a similar enactment as to two justices having a view), Lord Denman, in *Reg. v. The Justices of Cambridgeshire* (4 Ad. & Ell. 119) said, "I wish it to be distinctly

Diverting
highways.

understood that to ground an order of this kind, the view by justices is not sufficient, unless it be a joint view, nor unless their finding be come to immediately upon it. The justices are to make the order on consulting together, and they cannot proceed upon a separate view."

The justices also must be satisfied that the owner of the lands or grounds through which such new highway so proposed to be made has consented thereto, by writing under his hand.

The only two purposes for which a highway can be diverted are those of making the road *nearer or more commodious to the public*. If neither one nor the other of these objects be to be effected by the alteration, the act of Parliament does not apply, and the justices ought, on ascertaining the fact, to abstain from any further proceeding.

If the justices are satisfied that the preliminary facts are correct, and that the intended stopping up and diverting is desirable for the reasons before given, or that the highway is unnecessary, they are to direct the surveyor to give certain notices, as set out in the 85th section, and the schedules there referred to. Of course it will be unnecessary for the justices to instruct the surveyor as to what these notices are to be; those who have originated the proceedings will, of course, look to their regularity.

At the expiration of the period, during which the various notices are to remain in force, the surveyor will apply to the two justices for their certificate. But before they will grant it, they will require legal proof that all the requisites as regards the notices have been complied with; they will also require a plan particularly describing the old and the proposed new highway by metes, bounds, and admeasurement, verified by some competent surveyor. Upon being satisfied of the regularity of the proceedings, the justices

will certify under their hands the fact of their having viewed the highway, and that the proposed new highway is nearer or more commodious to the public ; and, if nearer, the number of yards or feet it is nearer ; or, if more commodious, the reasons why it is so, and if the highway is proposed to be stopped up as unnecessary, then the reason why it is unnecessary.

Diverting
highways.

This certificate, together with the proof and plan, are to be lodged with the clerk of the peace for the county, and are to be read by such clerk in open court, and are, together with the owner's written consent, to be enrolled amongst the records of the court.

It may here be observed that the *proof* of the due giving of the notices, &c. should be by *affidavit*, since such proof is to be forwarded with the certificate, and also that the newspapers in which the notices appear should be attached to the proof.

There is a power of appeal given with which at present it is unnecessary to deal.

If the quarter sessions make an order for the diverting or stopping up, such order may be at once carried into effect ; but no old highway (except in the case of stopping up a useless highway,) is to be stopped up until the new highway is completed and put into good condition and repair, and so certified by two justices of the peace upon view thereof, which certificate is to be returned to the clerk of the peace and enrolled at the sessions. The two justices here mentioned need not be the same two that made the original certificate.

The duties of justices when complaint is made to them that a highway is out of repair are highly important and require great attention, and such duties will vary according as the obligation to repair is or is not disputed.

Duties when
complaint
made of
highway
being out of
repair.

When the obligation to repair is not in dispute,

Duties when
obligation to

repair not
disputed.

the course of proceeding will be in accordance with the 94th section of the 5 & 6 Will. 4, c. 50, which enacts, that if any highway is out of repair, or is not well or sufficiently repaired and amended, and information thereof is given to any justice of the peace, it shall be lawful for him to issue a summons requiring the surveyor of the parish or other person chargeable with the repairs to appear before the justices at some special sessions for the highways, and the said justice shall either appoint some competent person to view the same and report thereon to the justices in special sessions assembled on a certain day, at which the surveyor or other person shall be directed to attend, or the said justices shall fix a day whereon they, or any two of them, shall attend to view the said highway; and if to the justices at such special sessions on the day and place fixed it shall appear on the view of such justices, &c., that the said highway is not in a state of thorough and effectual repair, then the said justices at such last-mentioned sessions shall convict the said surveyor or other party liable to the repair in any penalty not exceeding 5*l.*, and shall make an order on the said surveyor or other party liable, by which order they shall limit and appoint a time for the repairing of the same; and in default of such repairs being effectually made within the time so limited, the said surveyor or such other person shall forfeit and pay to some person to be named and appointed in a second order a sum of money to be therein stated, and which shall be equal in amount to the sum which the justices shall, on the evidence produced before them, judge requisite for repairing such highway, which money is to be recoverable in the same manner as any forfeiture is recoverable under the act; and such money, when recovered, is to be applied to the repair of such highway; and the justices are to direct in their order what proportion is to

be paid by each of the parties. The section then contains a provision to meet the case of a turnpike road, and restrains the justices from making such an order where the duty or obligation of repairing comes in question. This section so fully and clearly explains the duties of the justices that no comment upon it is at all necessary.

When the liability or obligation to repair is disputed, the duties of the justices assume a far different form ; and in such a case they have no functions themselves to decide the question, but are bound to put the matter in such a train that the question may be decided by a jury. The 95th section of the before-mentioned act points out what, under such circumstances, is to be done. That section says that if, on the hearing of any such summons respecting the repair of any highway, the duty or obligation of such repairs is denied by the surveyor on behalf of the inhabitants of the parish, or by any other party charged therewith, it shall then be lawful for such justices, and they are required, to direct a bill of indictment to be preferred, and the necessary witnesses in support thereof to be subpoenaed at the next assizes to be holden in and for the said county, or at the next General Quarter Sessions against the inhabitants of the parish, or the party to be named in such order, for suffering and permitting the said highway to be out of repair.

Duties when
liability to
repair is
disputed.

It will be seen from the foregoing, that if the obligation to repair be *bonâ fide* disputed, the justices have no discretion, but are bound to direct an indictment to be preferred, and it is no part of their duty to try the question of liability.

By the 4 & 5 Vict. c. 50, provision is made for applying a portion of the highway rate to the repairs of a turnpike road where the funds of the latter are insufficient for the purpose; this provision is to be made by the justices at a special

Applying
highway rate
to repair of
turnpike
road.

session for highways after hearing the parties interested. This act has by successive acts been continued to the present day.

Both under the General Turnpike Act (3 Geo. 4, c. 126,) and the several acts amending it, and the General Highway Act (the 5 & 6 Will. 4, c. 50,) very numerous duties devolve upon justices of the peace, but as they are not of a very special character, and as what has herein been treated of will sufficiently inform the justice of the peculiar nature of the duties he may be called upon to fulfil, it is deemed unnecessary further to extend observations upon this branch of the law by any additional remarks.

CHAPTER XVII.

LANDLORD AND TENANT—OF GIVING POSSESSION OF PREMISES WHEN TENANT HAS DESERTED THEM—OF GIVING POSSESSION OF CERTAIN PREMISES WHEN TENANCY HAS EXPIRED—GOODS FRAUDULENTLY REMOVED TO AVOID A DISTRESS—EXCESSIVE COSTS OF DISTRESS.

THE peculiar functions of justices of the peace in interfering in certain cases where the rights of landlords are assailed, demand a few observations in this place. Ordinarily, the summary and extensive powers which the law places at the disposal of landlords themselves, for their own protection against dishonest tenants, are sufficient without calling for the assistance of any of the magistracy: there are, however,

occasions when these powers are unavailing, and then it is that the assistance of a justice must be sought to render effective any measure which the law may warrant under the peculiar circumstances.

Under some circumstances, it is competent to a justice of the peace to put a landlord into possession of premises belonging to him, in respect of which the rent has not been paid, and to cover which no sufficient distress is to be found. The 11 Geo. 2, c. 19, s. 16, points out the powers of the justices under such circumstances; the act recites *that landlords are often great sufferers by tenants running away in arrear, and not only suffering the demised premises to lie uncultivated, without any distress thereon, but also refusing to deliver up the possession of the demised premises, whereby the landlords are put to the expense and delay of recovering in ejectment.* The above being the evils to be remedied, the statute proceeds to enact :—

Of giving possession of premises when tenant has deserted them.

That from and after the 24th day of June, 1738, if any tenant holding any lands, tenements, or hereditaments at a rack rent, or where the rent reserved shall be full three-fourths of the yearly value of the demised premises, who shall be in arrear for one year's rent, shall desert the demised premises, and leave the same uncultivated or unoccupied, so as no sufficient distress can be had to countervail the arrears of rent, it shall and may be lawful to and for two or more justices of the peace of the county, riding, division, or place (having no interest in the demised premises), at the request of the lessor or landlord, lessors or landlords, or his, her, or their bailiff or receiver, to go upon and view the same, and to affix or cause to be affixed on the most notorious part of the premises, notice in writing what day (at the distance of fourteen days at the least) they will return to take a second view thereof, and if upon such second view the tenant or some person on his or her behalf shall not appear and pay the rent in arrear, or there shall not be sufficient distress upon the premises, then the said justices may put the landlord or landlords, lessor or lessors, into the possession of the said demised premises, and the lease thereof to such tenant as to any demise therein contained only shall from thenceforth become void.

The provisions of this statute have been much enlarged by the subsequent statute of the 57 Geo. 3, c. 52, which, instead of a *year's rent*, reduces the amount to *half-a-year's rent*, and extends the landlord's powers to cases where the tenant holds under any demise or agreement, whether written or verbal, and although no right or power of re-entry be reserved to the landlord in case of non-payment of rent.

It will be seen, from the above statutes, that the powers of justices to give possession of deserted premises, extend only to certain specified cases, and not to all those in which a tenant refuses to pay his rent, or leaves the premises. In such other cases the landlord must seek his remedy in one of the usual forms of ejectment. The provisions of these statutes are so clear, that no further commentary upon them is at all requisite. It may be observed, however, that the application to the justices to interfere should be by information in writing, stating all the facts necessary to give jurisdiction.

Of giving possession of certain premises when tenancy has expired.

Somewhat analogous to the foregoing powers are those conferred upon justices of giving possession of premises to landlords, where tenants, whose terms have expired, refuse to give up the property. Under the old law, however clear the title of the landlord, however vexatious and wilful the retention of the premises of the landlord by the tenant, the former had no means of recovering possession but by an action of ejectment—a proceeding at all times expensive and prolix, and in many cases absorbing the entire value of the property. It was to remedy this evil, in cases where the premises were small in value, that the 1 & 2 Vict. c. 74, was passed; that act, which is entitled *An Act to facilitate the Recovery of Possession of Tenements after due Determination of the Tenancy*, after reciting that it is expedient to provide for the

more speedy and effectual recovery of the possession of premises unlawfully held over after the determination of the tenancy, enacts—

That from and after the passing of this act, when and so soon as the term or interest of the tenant of any house, land, or other corporeal hereditament held by him at will, or for any term not exceeding seven years, either without being liable to the payment of any rent, or at a rent not exceeding 20*l.* a year, and upon which no fine shall have been reserved or made payable, shall have ended, or shall have been duly determined by a legal notice to quit or otherwise, and such tenant, or (if such tenant do not actually occupy the premises, or only occupy a part thereof,) any person by whom the same or any part shall be then actually occupied, shall neglect or refuse to quit and deliver up possession of the premises or of such part thereof respectively, it shall be lawful for the landlord of the said premises or his agent to cause the person so neglecting or refusing to quit and deliver up possession to be severed (in manner hereinafter mentioned) with a written notice in the form set forth in the schedule to this act, signed by the said landlord or his agent of his intention to proceed to recover possession under the authority and according to the mode prescribed in this act; and if the tenant or occupier shall not thereupon appear at the time and place appointed, and show to the satisfaction of the justices hereinafter mentioned, reasonable cause why possession should not be given under the provisions of this act, and shall still neglect or refuse to deliver up possession of the premises or of such part thereof of which he is then in possession to the said landlord or his agent, it shall be lawful for such landlord or agent to give to such justices proof of the holding and of the end or other determination of the tenancy, with the time or manner thereof, and where the title of the landlord has accrued since the letting of the premises, the right by which he claims the possession, and upon proof of service of the notice and of the neglect or refusal of the tenant or occupier, as the case may be, it shall be lawful for the justices acting for the district, division, or place within which the said premises or any part thereof shall be situate, in petty sessions assembled, or any two of them, to issue a warrant under their hands and seals, to the constables and peace officers of the district, division, or place within which the said premises or any part thereof shall be situate, commanding them within a period to be therein named, not less than twenty-one or more than thirty clear days from the date of such warrant, to enter (by force, if needful) into the premises, and give possession of the same to such landlord or agent, &c.

The concluding portions of this section provide

against the execution of the warrant on a Sunday, Good Friday, or Christmas Day; the nonprotection of the person at whose instance the warrant has been obtained, if he had no right to possession; and to the saving of the rights of outgoing tenants, by the custom of the county or otherwise.

This long section, containing, as it does, the whole of the duties of the justices under the act, in a clear and explicit shape, being given at length, we have only to add, that the justices should be particularly careful in ascertaining, by proof, that all the requisites to give them jurisdiction have been strictly complied with, for, although by section 5, they are protected, although the landlord had no lawful right to the possession of the premises, yet they will be liable to consequences if they adjudicate without proof of the facts requisite to give them a power to determine. It will be well here to call to the attention of justices, that this act contemplates merely the ordinary relationship of landlord and tenant, and none other, such, for instance, as that of mortgagor and mortgagee (*Jones v. Owen*, 2 Bail Ct. Rep. 348; 18 L. J. 8 Q. B.), and that where a *bonâ fide* claim of right or title is set up, the jurisdiction of the justices ceases, as in all other cases.

It may also be observed, that by the 9 & 10 Vict. c. 95 (the County Courts Act), very similar powers to the above are given, by sect. 122, to the judges constituted under that act, with the addition of the amount of rent being extended to 50*l*.

Goods
fraudulently
removed to
avoid a
distress.

The 11 Geo. 2, c. 19, intituled *An Act for the more effectual Securing the Payment of Rents and Preventing Frauds by Tenants*, contains a number of excellent provisions, enabling justices to grant warrants, hear and adjudicate upon complaints of landlords against their tenants and

others who have clandestinely carried off goods to prevent their being seized for rent due ; but as there is nothing of an extraordinary character in its powers, it is not deemed necessary to do otherwise in these pages than to refer to the statute and to the decisions upon it, which will be found accurately cited in the last edition of Burn's Justice, tit. "Distress for Rent," sect. 5, "goods fraudulently conveyed off the premises."

Before quitting this subject it may be well to draw attention to certain powers which justices possess under the 57 Geo. 3, c. 93, intituled *An Act to Regulate the Cost of Distresses Levied for Payment of Small Rents*, whereby they are empowered, where the rent due does not exceed 20*l.*, and where greater costs have been levied, taken, or received, than those warranted by the schedule to the act, to interfere summarily, as pointed out by sect. 2, to examine into the facts, and adjudicate as provided. This act, it may be observed, is by the 7 & 8 Geo. 4, c. 17, extended to distresses for rates, taxes, impositions, and assessments.

Excessive
costs of
distress.

CHAPTER XVIII.

THEIR DUTIES WITH REFERENCE TO THE ADMINISTRATION OF THE POOR LAWS.

THE duties of justices of the peace with reference to the administration of the poor laws, though exceedingly varied and important, are chiefly of a routine nature, and but little calculated to create embarrassment or difficulty. There is, perhaps, no branch of the duties of magistrates more constant in its occurrence, more important in its character and results, and

yet more simple and easy of execution, than that which appertains to that head of the law to which we have adverted. Called into requisition for the most part merely to give a sanction to that which parties well competent to form an opinion have already determined is proper and necessary, justices have rarely little more to do in reference to this subject, when acting out of sessions, than that which is of a ministrative character ; yet, let it not be thought that such duties can be lightly passed over or performed without thought and deliberation; though acting in these matters at the instance of others in whom the law has placed the function of originating proceedings, and who, from being public officers, and the entire responsibility of all consequences falling upon them or those whom they represent, are deemed to be perfectly qualified to set properly and judiciously in motion this important section of the law, most of that which is to be done upon the subject is to be done upon the authority of the justices, and derives its whole force and legality from their sanction and approval. The administration therefore of the poor laws, though devoid of difficulties and of a plain and straightforward nature, demands, perhaps, as great if not a greater amount of attention than any other functions that spring from the office of a justice of the peace.

We have said that for the most part the duties of justices with reference to this subject are of a routine nature—they are such—but not so the law itself, which these duties are required to put into execution. The poor laws of this country, though much simplified within the last few years, still form in themselves a gigantic mass of legislation and judicial decisions ; to have a somewhat more than general insight into which, is essentially necessary to every justice of the peace

who is desirous of performing the duties of his office with ease to himself and satisfaction to the suitors. To have a body of parish officers before him upon a question of settlement involving nice inquiries and examinations into the law of marriage, emancipation, apprenticeship, hiring and service : and this probably not of the pauper himself but of some grandfather, or other remote ancestor, or turning upon legitimacy, irremovability, or desertion of parents, and yet be in ignorance of the law governing these important topics, would be, notwithstanding the assistance he may derive from a learned and an intelligent clerk, to place the justice in the most embarrassing and humiliating of positions. Critical knowledge of the subject is neither expected nor necessary ; but without a general knowledge of the principles of the poor laws, and the varied rights of settlement, and the practice of removals, no justice can reasonably hope to perform this portion of his duties in any other than a most inefficient manner.

It is not for these pages to point out and teach the learning upon this subject : the law is extensive though the practice is limited ; it is the latter alone that comes within our province, but at the same time it cannot be concealed that, without a knowledge of the law, and that too not gathered for the immediate occasion, but stored away for use as occasion may require, the practice upon the subject will be little comprehended and indifferently pursued. The law is to be found in the fourth volume of Burn's Justice, scattered over fourteen hundred closely printed pages, and in a variety of acts of Parliament and judicial decisions, which have been ushered into existence since the last edition of that work, but which may be found in several collected forms, to the perusal of all which we commend the attention of justices.

Order of
removal.

The first subject to which, in practice, the attention of justices will be called, will be that of giving their sanction to and making an order of removal. Upon a pauper becoming chargeable to a parish in which he is not legally settled, and having a lawful settlement elsewhere, the parish officers will make a complaint before a justice setting out the above facts, and then the justice will issue his summons for the appearance of the pauper ; if, however, the pauper is present at the time of the complaint being made, as is almost invariably the case, the further proceedings are entered into at once ; but it must be observed, that although one justice may receive the complaint and order the pauper to be brought up, it is necessary that two should hear the evidence and make the order of removal. Upon the pauper appearing, his evidence in support of the order of removal—namely, evidence showing that he is liable to be supported by some other parish or locality, and that of any other witness will be taken, and such documents will be produced as will assist in the proof necessary for the occasion ; whereupon, if the justices are satisfied that a sufficient case has been established for the removal of the pauper, they will sign and seal an order of removal. Formerly, when it was a good ground of appeal that the examinations were insufficient (from a variety of causes) to support the case of the removing parish, great care and acumen were requisite in taking them, but since the 11 & 12 Vict. c. 31, which by sect. 1 renders it unnecessary to transmit a copy of the examinations to the parish to which the pauper is to be removed, and by sect. 3 renders a deficiency in the examinations immaterial, strict accuracy is not of much importance, though for many reasons it is still desirable that the examinations should be as perfect as possible.

The order of removal being made, the functions of the justices upon the subject will cease, and if the parish upon whom the order is made intend to dispute their liability, the litigation will be carried on between the officers of the respective parishes. It will, however, often occur that the pauper is too ill to be removed to his parish, or even to come before the justices to be examined ; in such case, one justice may take his examination at the place where the pauper is, and then report the same to another justice who together are to adjudge the settlement of the pauper and to make and suspend the order of removal. The fact of the illness of the pauper and the consequent taking of the examination by one justice should be reported at the foot of the examinations ; and the two justices, also, who adjudicate, should state the fact of the report to them as before mentioned. Upon the back of the order of removal the justices will indorse an order of suspension. This order of suspension will remain in force until the pauper either dies or is sufficiently recovered to admit of being removed. Should the pauper recover (and no notice of appeal has been given) the justices will, upon an application for that purpose by the parish officers, sign an order removing the suspension, and directing the removal to be made, at the same time signing an order for the payment, by the other parish, of the reasonable expenses incurred by the removing parish.

Suspending
order of
removal.

To pursue further the inquiry as to the duties of justices with reference to the removal of the poor, would be as wearying as it would be unprofitable ; every one of them is of an ordinary description, and easily performed when the law itself is comprehended. Before, however, entirely leaving the subject of the poor laws, it will be well to call attention to that branch of them which relates to *poor rates*, in connexion

with which justices have important functions to exercise.

Poor rate—
Appeals.

With the making of a poor rate justices have nothing to do, although, before a rate can be collected it must be allowed by them, the allowance being a formal and ministerial act. Their principal duties have reference to the hearing in special sessions, of appeals, by parties aggrieved, against the rate or their particular assessment. The authority of justices of the peace to hear such appeals is derived from the 6 & 7 Will. 4, c. 96, which constitutes thereby an entirely new tribunal than before existed for the purposes of such appeals. The whole of the duties of the justices is comprised in sects. 6 and 7. The 6th section enacts—

That the justices acting in and for every petty sessions division shall *four times at least in every year hold a special sessions for hearing appeals against the rates of the several parishes within their respective divisions*, and shall cause public notice of the time and place when and where such special sessions will be holden to be affixed to or near to the door of the parish church of the said parishes, twenty-eight days at the least before the holding of the same; and such special sessions shall and may be adjourned from time to time by the justices there present, as they may think fit, and at such special or adjourned sessions the justices there present shall hear and determine all objections to any such rate *on the ground of inequality, unfairness, or incorrectness in the valuation of any hereditaments included therein*, which decision shall be binding and conclusive on the parties, unless the person or persons impugning such decision shall, within fourteen days after the same shall have been made, cause notice to be given in writing of his, her, or their intention of appealing against such decision, and of the matter or cause of such appeal, to the person or persons in whose favour such decision shall have been made, and within five days after giving such notice shall enter into a recognizance before some justice of the peace, with sufficient securities conditioned to try such appeal at the then next general sessions or quarter sessions of the peace which shall first happen, and to abide the order of and pay such costs as shall be awarded by the justices at such quarter sessions, or any adjournment thereof, and such justices, upon hearing and finally determining such matter of appeal, shall and may, according to their discretion, award such costs to the party or parties appealing or appealed

against as they shall think proper, and their determination in Appeals. or concerning the premises shall be conclusive and binding on all parties, to all intents and purposes whatsoever: provided always, that no such objection shall be inquired into by the said justices in special sessions unless notice of such objection in writing under the hand of the complainant shall have been given, seven days at least before the day appointed for such special session, to the collector, overseers, or other persons by whom such rate was made: provided also, that the said justices in special sessions shall not be authorized to inquire into the liability of any hereditaments to be rated, but only into the true value thereof and into the fairness of the amount at which the same shall have been rated.

Section the 7th invests the justices with powers of amending or quashing the rate and of awarding costs; the section is as follows:

That the justices present at any such special or adjourned session shall for the aforesaid purpose have all the powers of amending or quashing any such rate so objected to of any parish or other district within their division, and likewise of awarding costs to be paid by or to any of the parties, and of recovering such costs, which any court of quarter sessions of the peace has upon appeals from any such rate, except as herein excepted: provided always, that no order of the said justices shall be removed by *certiorari* or otherwise into any of His Majesty's Courts of Record at Westminster: provided also, that nothing in this act contained shall be construed to deprive any person or persons of the right to appeal against any rate to any Court of General or Quarter Sessions: provided also, that no order of the said justices in special sessions shall be of any force pending any appeal touching the same subject-matter to the Court of General or Quarter Sessions of the Peace having jurisdiction to try such appeal, or in opposition to the order of any such court upon such appeal.

With instructions so full and plain, justices will readily be enabled to perform the duties assigned them under this act.

CHAPTER XIX.

THE DUTIES OF JUSTICES WITH REFERENCE TO
THE PRESERVATION OF THE PUBLIC PEACE—
APPOINTMENT, &c., OF CONSTABLES—SPECIAL
CONSTABLES—CALLING IN MILITARY AID—THE
RIOT ACT.

As conservators of the peace, justices have many duties to perform, which, though of a highly important character, are for the most part of a simple kind: requiring, nevertheless, upon occasion, great firmness and determination of disposition. To justices of the peace is confided the due maintenance of public order and personal security throughout the land, and to accomplish these objects they are invested with powers of the most adequate description.

In every case in which the public peace is likely to be disturbed, it is the duty of the justices to take steps for its preservation, and whenever any breach is actually committed or threatened in the presence of a justice, he should at once arrest the offender or cause him to be arrested, or provide means to counteract the intended disturbance. And in the performance of this duty, a justice is authorized to call upon all or any of the Queen's subjects present to aid and assist him, a refusal to assist under such circumstances being an indictable offence: (*Reg v. Brown*, 1 Car. & Mar. 314.)

The occasions, however, upon which the personal presence of a justice is necessary for the preservation of the peace are comparatively rare, the presence of constables being generally amply adequate, and for the enrolling of any number of special constables to meet any extraordinary emergency, the powers of justices are extremely ample. Occasions, however, will sometimes un-

happily occur, as in the case of an unlawful assembly or a riot, when the personal presence of a justice may be attended with the most beneficial results, and at such times it is unquestionably the duty of every justice who desires to perform with credit the functions of his office, to present himself before the delinquent parties and endeavour, by the authority of his office, to restore tranquillity.

The appointment and management of constables, except where the direction of the police is by statute entrusted to other hands, as in the case of municipal boroughs and the county constabulary force, are vested in the justices. The 5 & 6 Vict. c. 109, intituled *An Act for the Appointment and Payment of Parish Constables*, contains provisions for the appointment of constables in every parish in England. That statute provides for the nomination and selection of certain persons to act as constables, and directs when and how they are to be paid for their services. The act, which is a very complete and useful one, invests justices with numerous powers upon the subject, directing them to hold a special sessions for the appointing of constables to be selected from a list of qualified persons to be prepared and presented by the overseers, and otherwise pointing out the course they are to pursue in the event of vacancies, or the vestry coming to the determination of having one or more salaried constables.

In cases of great emergency the justices are enabled to call to their assistance, for the preservation of order, any number of persons they may think requisite, and, by swearing in special constables, call into existence a force that shall be sufficient to counteract the apprehended danger. The 1 & 2 Will. 4, c. 41, which is an act intituled *An Act for amending the Laws relative to the Appointment of Special Constables*,

Special
constables.

and for the better Preservation of the Peace, gives justices ample powers upon the subject.

The first section of the above act is that which confers the powers upon the justices, and enacts—

That in all cases where it shall be made to appear to any two or more justices of the peace of any county, riding, or division, having a separate commission of the peace, or to any two or more justices of the peace of any liberty, franchise, city, or town in England or Wales, upon the oath of any credible witness that any tumult, riot, or felony has taken place, or may be reasonably apprehended in any parish, township, or place situate within the division or limits for which the said respective justices usually act, and such justices shall be of opinion that the ordinary officers appointed for preserving the peace are not sufficient for the preservation of the peace and for the protection of the inhabitants and the security of the property in such parish, township, or place as aforesaid, then and in every such case such justices, or any two or more justices acting for the same division or limits, are hereby authorized to nominate and appoint by precept in writing under their hands, so many as they shall think fit of the householders or other persons (not legally exempt from serving the office of constable), residing in such parish, township, or place as aforesaid, or in the neighbourhood thereof, to act as special constables for such time and in such manner as to the said justices respectively shall seem fit and necessary for the preservation of the public peace, and for the protection of the inhabitants, and the security of the property in such parish, township, or place; and the justices of the peace who shall appoint any special constables by virtue of this act or any one of them, or any other justice of the peace acting for the same division or limits are, and is hereby authorized, to administer to every person so appointed the following oath:

A form of oath is then given, and a provision is made for transmitting a notice of the nomination of special constables to the Secretary of State and the lieutenant of the county. The justices have then powers given them to make such orders and regulations as may from time to time be necessary and expedient for rendering such special constables more efficient for the preservation of the public peace. Justices have also the power to fine on conviction any person so appointed who refuses to be sworn, or for

neglect of duty. The justices, moreover, are empowered by the act (sect. 13), to order from time to time such reasonable allowances for their trouble, loss of time, and expenses, to be paid to such special constables who shall have so served or be then serving as to them shall seem proper, and also the payment of such expenses as may have been incurred in providing staves or other necessary articles for such special constables, such money to be paid by the treasurer of the county.

With powers so ample for the preservation of the public peace, justices will rarely find themselves without the means of suppressing a riotous or an unlawful meeting. Much discretion, however, is undoubtedly necessary in the exercise of these functions, since by calling out so extraordinary a force as a body of special constables, great public alarm is necessarily excited; and if, therefore, the occasion be not one to render such a proceeding absolutely necessary, very much public mischief may be created by the fear which it excites, and the jealousies which it tends to occasion between classes (particularly if political excitement should prevail at the time), which will not readily be forgotten.

In the event, however, of extraordinary danger to the public peace by the assembling together of large bodies of people obviously bent upon mischief, the justices may feel that even some more vigorous and disciplined force than that which the civil power provides, may be necessary to preserve order; and in that case they will do well to seek for the assistance of such military force as may be near enough to render it; at the same time, if there be a body of yeomanry cavalry in the district, means should be taken to have them called together, and put at once into such activity as may best serve to protect and secure the public peace.

Special
constables.

Calling in
military
assistance.

The Riot Act. If the riot be of an aggravated nature, and the persons taking part in it amount to twelve in number, it may become the duty of the justices to read the proclamation from the Riot Act (1 Geo. 1, st. 2, c. 5), whereby the conduct of the rioters, if they do not disperse, becomes highly penal, subjecting them, in the event of a conviction, to transportation for life: (7 Will. 4, and 1 Vict. c. 91.) The 1st section of the Riot Act describes the circumstances under which the act should be enforced, and it says—

That if any persons to the number of twelve or more, being unlawfully, riotously, and tumultuously assembled together, to the disturbance of the public peace, at any time after the last day of July, in the year 1715, and being required or commanded by any one or more justice or justices of the peace, or by the sheriff of the county, or his under-sheriff, or by the mayor, bailiff, or bailiffs, or other head officer or justice, of the peace of any city or town corporate where such assembly shall be, by proclamation to be made in the King's name in the form hereinafter directed, to disperse themselves, and peaceably to depart to their habitations or to their lawful business, shall, to the number of twelve or more, notwithstanding such proclamation made, unlawfully, riotously, and tumultuously, remain or continue together, by the space of one hour after such command or request made by proclamation, that then such continuing together, to the number of twelve or more, after such command or request made by proclamation, shall be adjudged felony without benefit of clergy; and the offenders therein shall be adjudged felons, and shall suffer death as in case of felony without benefit of clergy.

The punishment is now altered by 7 Will. 4 & 1 Vict. c. 91, to transportation for life.

The 2nd section of the Riot Act directs—

That the order and form of the proclamation that shall be made by the authority of this act shall be as hereafter followeth, (that is to say,) the justice of the peace or other person authorized by this act to make the said proclamation, shall, among the said rioters, or as near to them as he can safely come, with a loud voice command, or cause to be commanded silence to be, while proclamation is making, and after that shall openly, and with loud voice, make, or cause to be made, proclamation in these words or like in effect:

"Our Sovereign Lady the Queen chargeth and commandeth all persons being assembled, immediately to disperse themselves and peaceably to depart to their habitations, or to their lawful business, upon the pains contained in the act made in the first year of King George, for preventing tumults and riotous assemblies. "GOD SAVE THE QUEEN."

To make this proclamation of any legal The Riot Act. validity, the form of it must be strictly pursued. It must not be supposed that until the expiration of an hour no steps can be taken to suppress the riot; all the ordinary powers of the authorities still remain for the purpose of preserving the peace, the object of the Riot Act being merely to impose a graver punishment upon those who, after the proclamation, choose to remain together for the space of an hour. The 3rd section confers extraordinary powers for the seizing of persons remaining after the expiration of the hour.

Where it becomes necessary to read the Riot Act, the duty of doing so must be performed by the justice personally; it is, however, no part of his duty to head the constables or to arrange them, nor to ride out with the military, though it is expected of him that when the occasion requires it, he should, in the first instance, give the officer in command of the military, proper orders when to act.

The duties of justices with reference to the suppression of riots, are well and clearly explained in the case of *Rex v. Pinney* (5 Car. & Pay. 254; and 3 Bar. & Ad. 947), which was an information filed against the Mayor of Bristol for neglect of duty during the memorable riots in that city in October, 1831.

CHAPTER XX.

GRANTING SEARCH WARRANTS—DUTIES UNDER THE MUTINY ACTS—GRANTING LICENCES—SPECIAL SESSIONS FOR PASSING HIGHWAY SURVEYORS' ACCOUNTS AND SETTLING JURY LISTS—POWERS TO ACT EX OFFICIO.

IN the foregoing chapters attention has been given to most of the duties which justices are at times called upon to perform of an intricate or a responsible nature ; there are still many functions to be considered which, although of a less difficult description, and involving in their exercise an inferior amount of responsibility, require consideration and thought. Foremost amongst these may be mentioned the granting of search warrants for goods clandestinely or feloniously secreted.

Granting
search war-
rants.

The powers of justices to grant search warrants are derived from their commission, and also from statutory enactments. Under their commission they have power where a complaint is made to them upon oath that goods have been stolen, and that the party suspects—showing good cause for his suspicion—that they are in a particular house or other place, to grant a warrant to search such house or suspected place, and to take the goods and also the parties in whose possession they are found, and to bring them before them, the said justices, or some one or other justices, to give an account of how they came by them. There are various statutes which in particular instances give justices power to grant such warrants, to which the attention of the justices will be called by the parties desiring their exercise ; their general statutory authority, however, upon this subject, is derived from the 7 & 8 Geo. 4, c. 29, s. 63 (*An Act for consolidating and amending the Laws of England*

relative to Larceny and other Offences connected therewith), which after giving powers of summarily apprehending offenders, enacts— Search warrants.

And if any credible witness shall prove upon oath before a justice of the peace a reasonable cause to suspect that any person has in his possession or on his premises any property whatsoever in or with respect to which any such offence (offences punishable either upon indictment or upon summary conviction by virtue of this act) shall have been committed, the justice may grant a warrant to search for such property as in the case of stolen goods, &c.

As regards the manner in which a search warrant is to be executed, it is not within the purpose of these pages to consider; it may, however, be observed, that on the return of the warrant the justice will deal with the case according as it is proved that the goods have been really stolen or not, or as it may appear from the evidence that the party in whose possession they have been discovered is or is not criminally connected with them. Should it transpire that the property has really not been stolen, it should be restored to the party from whose possession it has been taken; but if otherwise, it should be confided to the keeping of some officer to be produced at the trial of the offending party. As regards the person himself in whose possession the goods are discovered, the justice will deal with him according to the merits of the case, and either discharge him or commit him for trial, as it shall appear that he is innocent or amenable to punishment for his share in the transaction.

Before granting a search warrant a justice should fully satisfy himself that the interests of justice imperatively require him to do so, since, by an unguarded or ill-considered exercise of this power, the reputation of an honest and a deserving man may be for ever entirely blasted. The mere fact that the house of a man has been searched for stolen goods, though nothing may Caution in granting.

be discovered therein, and although his general character may negative the supposition that he has been dealing dishonestly, cannot but cast a slur upon his reputation of the most painful description. To avoid, therefore, as far as possible, the chance of inflicting so grave an injury upon an honest man, a justice who is applied to for a search warrant should not very readily lend an ear to the suspicions of a party, who, from being the victim of dishonesty, may be too ready to suspect the culprit, and to draw inferences unwarranted by the facts themselves, but should require upon oath a statement of facts of such a nature as to leave in his mind no reasonable doubt that the search required will lead to the results anticipated by the applicant.

Duties under
the Mutiny
Act.

The duties of justices with reference to soldiers and marines are numerous and of frequent occurrence, but, at the same time, they are so well defined in the annual "Marine Mutiny" and "Mutiny" Acts, and are so simple of themselves, that it is wholly unnecessary to dwell upon them.

Granting
licences.

There are few functions of justices requiring greater discretion in their exercise than those of granting licences for the carrying on of various trades or the establishment of certain occupations. To justices assembled at special sessions has been confided the power of permitting or refusing to be carried on certain occupations of a public nature; and, confiding in the integrity and wisdom of this body, the Legislature has conferred upon them a vast and almost unlimited discretion upon the subject. Thus, to the justices is confided the power and duty of licensing "ALEHOUSES" (9 & 10 Geo. 4, c. 61, *An Act to Regulate the Granting of Licences to Keepers of Inns, Alehouses, and Victualling-houses in England*); DEALERS IN GAME (1 & 2 Will. 4, c. 32, *An Act to amend the Laws in England relative*

to Game); **KEEPERS OF BILLIARD TABLES** (8 & 9 Vict. c. 109, *An Act to amend the Laws concerning Games and Wagers*); and of **THEATRES** (6 & 7 Vict. c. 68, *An Act for Regulating Theatres*.)

The various statutes upon these subjects, contain very many provisions requiring careful observance; and for full information, therefore, it is necessary to refer the reader to the enactments themselves. Before, however, leaving the subject, some remarks may properly be made upon the rules which should guide justices in the exercise of their discretion. On reference to sect. 6 of the 9 & 10 Geo. 4, c. 61 (for licensing alehouses), it will be seen that justices who are interested in the licence in any of the numerous ways therein specified, are prohibited from acting or being present at the licensing meeting; and although there is no similar prohibition with reference to other kinds of licences, good taste will, in every case, suggest that, whenever a justice has a personal interest either in granting or withholding a licence, he should carefully abstain from taking any part as a magistrate in the proceeding. In all cases of granting licences, a very wide discretion is permitted to justices, it being, with reason, supposed that, from their position in the locality, and their opportunities of forming a correct judgment upon the subject, they are, in many cases, the only, and in most of them, the best persons to say whether or not, in any given case, a licence should be granted or refused. Where, therefore, the question is one of discretion with the justices, little can be said, except that it is to be expected that, in an age such as the present, remarkable for the enterprize and improved taste of the middle and working classes, that discretion will be exercised with no narrow and contracted views, but with the enlightened object, as far as in them lies, of pro-

Licences.

moting the greater convenience, comfort, and enjoyment of the people at large.

Special
sessions for
passing
Highway
Surveyor's
accounts, and
settling jury
lists.

In a former chapter attention was directed to the occasion of special sessions being held for the hearing of appeals against poor rates. There are other occasions upon which special sessions are to be held, for the purposes, amongst other things, of appeals, such as that for the passing of the accounts of the Surveyor of Highways, under the 5 & 6 Will. 4, c. 50, s. 44, and for the reviewing, allowing, and appealing against the list of jurors. By the 6 Geo. 4, c. 50, *An Act for consolidating and amending the Law relative to Jurors and Juries*, the churchwardens and overseers of every parish are annually to make out a list of all persons within their parish qualified and liable to serve on juries, a copy of which is, on the three first Sundays in September, to be fixed upon the principal door of every church, chapel, and other place of religious worship within their parish, having first subjoined a notice that all objections to the list will be heard by the justices at a time and place mentioned; and, in the last seven days in September, the justices are to hold a special sessions, at which the list is to be produced, and the parish officers are to answer, upon oath, such questions as the justices may put. At the same petty sessions, persons not qualified and liable to serve on juries may make their objection, and have their names erased. The grounds of disqualification and exemption are fully stated in the act.

Powers to act
ex officio.

There are many occasions upon which justices have a power of acting *ex officio* with other bodies of functionaries, and of becoming, when so acting, an integral portion of such bodies; thus, they are empowered to act as Commissioners of Assessed Taxes and the Land-tax: (7 & 8 Geo. 4, c. 75, s. 1; 3 & 4 Will. 4, c. 95; 45 Geo. 3, c. 48, s. 3; and 52 Geo. 3, c. 95,

s. 31.) So, too, justices of the peace of the county through which a turnpike road passes may act as trustees or commissioners of the road, as if they were named as such in the turnpike act relating to the road (3 Geo. 4, c. 126, s. 7); and by the 4 & 5 Will. 4, c. 76, s. 38, it is enacted, "that every justice of the peace residing in any such parish (which has been united into a union) and acting for the county, riding, or division in which the same may be situate, shall be an *ex officio* guardian of such united or common workhouses, and shall, until such board of guardians shall be duly elected and constituted as aforesaid; and also, in case of any irregularity or delay in any subsequent election of guardians, receive and carry into effect the rules, orders, and regulations of the said commissioners; and after such board shall be elected and constituted as aforesaid, every such justice shall *ex officio* be, and be entitled, if he think fit, to act as a member of such board, in addition to, and in like manner as, such elected guardians." Acting
ex officio.

Having now treated of the chief matters with which justices not assembled in quarter sessions will have at times to deal, it may be proper, before entirely quitting this branch of the subject, to observe that, although the duties thus discussed are unremunerated and voluntary, nevertheless, when justices have placed themselves in a position to perform them, they may be compelled to proceed to adjudicate, and finally determine any matter properly brought before them, and clearly within their jurisdiction. Upon this subject it is not, however, intended at this time to enter. At a subsequent period we shall have to consider the means by which justices can be compelled to act or be restrained from acting in matters brought under their attention; a subject fruitful of many nice considerations and refined doctrines. Justices
when
compellable
to act.

It will, of course, be understood that the

foregoing chapters have not been designed as a compendium of *all* the duties which a justice may be called upon to perform out of sessions, but as merely a full specimen of those varied proceedings in which at times it may be his duty to take a part; the method of performing his duties and the practical mode of administering justice, rather than a treatise upon the law itself, being the aim and scope of these pages.

CHAPTER XXI.

DUTIES WITH REFERENCE TO THE QUARTER SESSIONS—GENERAL AND QUARTER SESSIONS, NATURE OF—WHEN QUARTER SESSIONS TO BE HOLDEN—QUARTER SESSIONS IN BOROUGH—THE PLACE OF HOLDING QUARTER SESSIONS—DUTY OF JUSTICES TO BE PRESENT—CLERK OF THE PEACE—QUARTER SESSIONS A COURT OF RECORD, AND NOT AN INFERIOR COURT.

Duties with
reference to
the quarter
sessions.

HAVING in the preceding chapters gone somewhat in detail into those duties which justices have to perform when sitting out of sessions, or merely at petty or special sessions, it will now be proper to consider those functions which appertain to the office with reference to the general and quarter sessions of the peace.

By the policy of our government as continued for many centuries, the great business of administering the bulk of the criminal law of the country, has been intrusted to the justices assembled at their general and quarter sessions. These sessions have been established in every county of the kingdom, and four times at least in every year they are made the means of disposing of most of the criminal charges which

require the decision of a jury. The jurisdiction of Courts of Quarter Sessions over crime is therefore of a most extensive nature, and is limited only by those exceptive cases to which hereafter we shall have more particularly to refer. It is however, not merely as tribunals for the trial of criminal offences that Courts of Quarter Sessions are of importance; as civil tribunals intrusted by the Legislature to carry out many important purposes of a public nature, and more particularly to regulate the general management of county affairs, and as Courts of Appeal from the decisions of individual justices, or bodies of justices sitting in Petty or Special Sessions they are of the greatest consequence.

There are two descriptions of sessions of the peace, namely, "General Sessions," and "General Quarter Sessions." The former are holden before the justices under their general authority derived from their commission, and under various statutes for the transaction of the proper business of the occasion, and may be holden as often as occasion may require; the latter are those periodical sessions which the Legislature has directed shall be holden at certain times in each quarter of the year. General Sessions, however (except in the county of Middlesex, see 7 & 8 Vict. c. 71), are now entirely merged in the General Quarter Sessions, which, with their adjournments, are the sessions which at stated periods are held in every county in the kingdom.

General and
quarter
sessions,
nature of.

The periods at which the General Quarter Sessions are now holden are fixed by act of Parliament, and it is thus by the 1 Will. 4, c. 70, s. 35, enacted—

When quar-
ter sessions
are to be
holden,

That in the year of our Lord 1831 and afterwards, the justices of the peace in every county, riding, or division for which quarter sessions of the peace by law ought to be held, shall hold their general quarter sessions of the peace in the first week after the 11th day of October, in the first week after the

28th day of December, in the first week after the 31st day of March, and in the first week after the 24th day of June.

When to be
holden.

It will, of course, be observed that, in this calculation the entire week in which any one of the before-mentioned days falls is to be excluded—thus, as Sunday is the first day of the week, should the 11th of October fall upon that day the sessions cannot be holden until the Monday week following, being the 19th of the month, and so of the other days mentioned in the statute. It is, of course, competent to the justices to arrange to commence holding their sessions on any day of the week, so that they commence in the proper week, and also, having properly commenced them to continue thereon after that week has elapsed, until the business has been brought to a regular conclusion.

To prevent, however, the inconvenience which would arise from the spring sessions (after the 31st of March) clashing with the county assizes, the 4 & 5 Will. 4, c. 47, was passed, which, after reciting that in some counties the time usually fixed for holding the spring assizes interferes with the due holding of the last-mentioned Quarter Sessions, &c. enacts—

That in every county, riding, or division for which general quarter sessions ought to be held, it shall be lawful for the justices assembled in their general quarter sessions, in the week next after the 28th day of December in every year, to name (if they shall see occasion so to do) two justices of the peace, who shall be empowered, as soon as may be after the time for holding the spring assizes shall be appointed, to fix the day for holding the next general quarter sessions of the peace for such county, riding, or division, so as such time shall not be earlier than the 7th day of March, or later than the 22nd day of April, and to give notice of the day so fixed by advertisement, &c.

Quarter
sessions in
boroughs.

In boroughs, under the Municipal Corporations Act (5 & 6 Will. 4, c. 76), in which there is a grant of Quarter Sessions, such sessions are

directed to be holden before the recorder. The 105th section enacts :

That the recorder of every borough shall hold once in every quarter of a year, or at such other and more frequent times as the said recorder, in his discretion, may think fit, or as His Majesty shall think fit to direct, a Court of Quarter Sessions of the peace, in and for such borough, of which court the recorder of such borough shall sit as the sole judge, &c.

As regards the *place* at which the sessions are held, this is entirely within the discretion of the justices. In determining upon the locality, the justices are, of course, influenced by various considerations; thus, if there be one large and central town, having the convenience at hand of the county gaol or house of correction, it is probable that such town will be selected as the only one at which the sessions should be held throughout the year; or if the principal towns be at considerable distances from each other, and not centrally located, the justices will, probably, think it advisable to hold the sessions alternately at different towns, or adjourn them from one town to another.

The place of holding quarter sessions.

The matters to be transacted at the Quarter Sessions, being of a highly important and varied character, and arising from all parts of the county, they require the attention of the great body of the justices, who, laying aside all considerations of private convenience, should be scrupulously exact in their attendance upon this tribunal. Occasionally, questions of the gravest moment, involving the outlay of vast sums of money, and the permanent and heavy taxation of the county, will be brought under the consideration of the assembled justices, and vested, as these gentlemen are, with an unlimited discretion, and with great powers of taxation, it should be no trivial excuse which should prevent any of them from assisting at those deliberations

Duty of justices to be present at quarter sessions.

which may be followed by such important consequences. The justices assembled at their Quarter Sessions resemble, in many particulars, the national Parliament. Their functions, in raising taxes (county rates) for the purposes of the county expenditure, are subject to little check or qualifications; and in the matter of county bridges, gaols, lunatic asylums, the establishment of a county constabulary, &c., their powers are extensive and important. These considerations will be sufficient to impress upon every justice a sense of the propriety of his giving his vigilant attention to the duties to be performed at the Quarter Sessions, and of the extent of the wrong which he may inflict upon the county by neglecting to attend in his proper place to its interests and welfare.

Clerk of the
peace.

Before dismissing this subject, it will be proper to call attention to the existence of an officer, whose functions, in connexion with the Quarter Sessions, are of great importance. We allude to the Clerk of the Peace. This functionary is the representative of the *custos rotulorum*, who is the principal personage amongst the body of the justices (being usually also the Lord Lieutenant of the county, though the offices are essentially distinct), being the keeper of the rolls of the peace, and other official county documents. The Clerk of the Peace, is appointed by the *custos rotulorum*, but is a distinct officer of the sessions, and holds his office during good behaviour. Although not a servant to the justices, he may, upon a charge in writing, exhibited at the sessions, of having misdemeaned himself in the execution of his office, and due proof of the truth of such charge, be suspended or discharged by them.

The duties of this officer are of a very extensive nature, comprising, in fact, the arrangement and the carrying out of the practical details of

the entire sessions. Thus, he gives the proper notices for the holding of the sessions, issues its processes, records its proceedings, and does all ministerial acts necessary to give effect to its proceedings and decisions. He is, in fact, the instrument which puts in motion, and continues the entire process of, the sessions, seeing that all the practical details are conducted with regularity, and that nothing is wanting to give proper and legal effect to the business transacted. In addition to this, the Clerk of the Peace, from his experience in practice and general knowledge of the law, is often referred to by the justices for his views upon questions in which the regularity or sufficiency of their proceedings is in debate. Clerk of the peace.

From these circumstances, it will at once be seen that the office of Clerk of the Peace is one involving great responsibilities, and requiring considerable vigilance and talent in its execution. Hence, we generally find it filled by a gentleman brought up to the law, who has practised for some time either as a barrister, or an attorney, or a solicitor, and who is properly looked upon by all the justices as a gentleman to whom they can at all times, with propriety, refer for information and instruction upon any matters coming properly within his official knowledge, connected with their duties and liabilities.

This functionary is usually remunerated by fees, payable according to a settled scale. However by the 14 & 15 Vict. c. 55, s. 9, the justices at their General or Quarter Sessions, may recommend to the Secretary of State, that for the future he shall be paid by a stated fixed salary, whereupon such Secretary of State may order that the Clerk of the Peace shall for the future be paid by a stated fixed salary in lieu of fees. The act also provides in like manner for

the payment by fees in lieu of a fixed salary, and also for the altering of the foregoing arrangements from time to time.

Quarter sessions a Court of Record, and not an inferior court.

In conclusion, it is proper to observe that the Court of Quarter Sessions is a Court of Oyer and Terminer, and is not a court of inferior jurisdiction: (*Rex. v Smith*, 8 B. & C. 342; per Lord Tenterden.)

CHAPTER XXII.

RULES AND ORDERS OF SESSIONS—THE DAY OF THE WEEK OF HOLDING THE SESSIONS—THE CHAIRMAN—MODE OF PROCEEDING—OPENING THE SESSIONS—GRAND JURY—CHARGING THE GRAND JURY—DIVIDING THE SESSIONS—BUSINESS PROCEEDED WITH ON THE FIRST DAY—COMMITTEES, THEIR APPOINTMENT—THEIR VARIETY AND DUTIES—THEIR REPORTS—THEIR DURATION—VACANCIES—PRESENTING REPORTS—PROCEEDINGS THEREUPON—APPOINTING COUNTY OFFICERS—MOTIONS.

Rules and orders of sessions.

THE duties which justices have to perform at their quarter sessions, extending over a vast variety of matters, it has been found necessary for their due and regular performance that a body of rules should be framed, directing the order and method in which the business is to be transacted. Every county has its standing orders, which have been framed by the justices at sessions, with the view to the orderly and efficient conduct of business; and as these orders are intended to be a code of practice, they will be the test by which the regularity of any given proceeding within their operation will be tried. These rules, thus framed by the justices at sessions, remain in force until

they are abrogated by the same authority, it being always competent to any justice to propose a repeal or modification of them.

The matters over which these rules have influence being of a very varied nature, and differing materially, according to the peculiar circumstances of different counties, no exact description can be given of them. The justices will adopt them in accordance with what they may consider to be the most convenient method of conducting the business of the county, which will greatly vary, as the county is large or small, dense or scanty of population, &c., their powers to adopt rules being limited only by this, that they must be within the scope of the purposes for which the justices are assembled, and must not impose conditions not warranted by law. The ability to frame rules is inherent in all courts, and as long as the rules themselves do not infringe the law, but merely assist in the orderly conduct of business, they are wholly free from legal objection. These rules, when adopted, are generally published, and distributed amongst the justices of the county, and are also given to the public at large, on application.

The week in which the quarter sessions are to be holden, being, as we have seen, fixed by act of Parliament, the rules of the sessions will determine the *day* of the week on which they are to commence. This day is commonly the Monday or Tuesday, the hour of twelve being that usually at which the justices assemble.

At every quarter sessions one of the justices (selected by the other justices) acts as *chairman*, and is designated as such, holding his office continuously. A deputy-chairman is also generally appointed to preside in the absence of the chairman himself. The chairman, as the visible head of the great body of justices, presides, as his name implies, over all the proceedings at

The day of the week of holding the sessions.

The chairman.

sessions. To him are addressed all motions, and through him is the business of the sessions chiefly conducted, he, however, having only co-ordinate powers with the other justices, and having no other powers (saving those of a merely formal nature) than are vested in the other magistrates.

Mode of
proceeding.

As the mode and order of proceeding upon the opening of the sessions are for the most part of a merely formal nature, and are susceptible of little variation, being chiefly under the immediate superintendence of the clerk of the peace and the chairman, it will be unnecessary to do more in this place than give a general reference to them.

Opening the
sessions,
grand jury.

The justices having assembled, the sessions are opened by proclamation. By various statutes it has been provided that certain acts of Parliament shall be read in open court at the commencement of the sessions. It is, however, now usual only to read the Queen's proclamation against vice and profaneness. This done, the high sheriff is required to return the different precepts which have been directed to him, such as those directing him to return the grand and petty juries, whereupon the under-sheriff makes his return. Hereupon the names of the grand jurors are called, and upon a sufficient number answering, they are empanelled into a jury. The number constituting the grand jury is not a definite one, it may vary from twelve to twenty-three. In deciding upon finding or ignoring a bill of indictment, the decision must be that of a majority, and this majority must consist of twelve, at least. To ensure, therefore, a majority of such a number, it is usual to swear twenty-three upon this jury. One of the gentlemen composing the jury is selected by the court to be foreman thereof, and to him is administered a certain prescribed

oath ; after which the rest of the grand jury are usually sworn together by a summary kind of oath, that the same oath which their foreman has taken on his part, they would well and truly observe and keep on their parts.

The grand jury being sworn, the chairman Charging the grand jury. proceeds to address them upon their duties ; and here we cannot do better than quote the words of the learned editor of *Dickinson's Quarter Sessions*, which are as follows : " When the grand jury are sworn, it becomes the duty of the chairman of the sessions to deliver his charge to them. It should consist of remarks tending to explain and elucidate any cases which the calendar may disclose, or may be likely to be presented, and to require more than ordinary attention, either from the complicated nature of the facts, or from the law applicable to them happening to be of recent enactment or of unfrequent use. In cases, for example, where the distinction between principal in the first or second degrees, and accessaries before or after the fact, between theft or embezzlement, or between larceny and breach of trust, or obtaining money under false pretences, are likely to arise on the matter which will be submitted to the grand jury, a popular explanation of the law on these subjects will facilitate their labours, and give to them their proper aim. When parties have been committed or held to bail on charges arising upon any recent act of Parliament, it becomes absolutely necessary that the statute should be stated and explained by the chairman, and even where no such case is presented by the calendar, it may be expedient for him to take this opportunity of publicly stating and expounding any new penal law, or modification of the former law, which it may be desirable should be generally understood. In the exercise of a sound discretion, he may

also advert to general topics presented by the calendar—to the prevalence of crime in general, or of any particular class of crime—to the causes which may induce it, and the means which may be applied by way of prevention. He may properly take occasion to discourage petty and frivolous prosecutions, as indictments for trifling assaults, which only serve to prolong animosities, to unsettle habits of industry, and to burden the parties with fruitless expenses. His local knowledge will enable him to expose with gentleness and clearness any prevalent mistake which may operate to the public evil, as those which sometimes exist in the remuneration of the labourer and the administration of the poor laws; and, in times of excitement, to suggest considerations which may tend to preserve peace, order, and good feeling among all classes of his neighbours.” In addition to this, the grand jury should be invited, in the event of any legal difficulties arising, to apply to the bench for information and assistance, and be requested to use all reasonable despatch in their inquiries, that the court may, without delay, proceed with the criminal business of the county. Upon the charge being concluded, the grand jury will retire to their own chamber, and all prosecutors, with their witnesses, will be directed to prefer their bills of indictment, and go with them before such jury.

Dividing the sessions.

The justices then proceed with the general business of the county, in the order provided for by their rules of sessions, one portion of which is the consideration of the propriety of empowering two justices to sit apart from them, for the purpose of disposing of certain descriptions of business. This proceeding is founded on the 59 Geo. 3, c. 28 (*An Act to empower Magistrates to divide the Court of Quarter Sessions*), which enables justices, whenever,

on the first day of their assembling, it shall appear to them that the business, if heard and determined by the whole court, is likely to occupy more than three days, including the day of their being so assembled, to appoint two or more justices to sit apart from themselves, in some place in or near the court, there to hear and determine such business as shall be referred to them, whilst others of the justices are, at the same time, proceeding in the despatch of the other business of the same court.

The business which now comes under the cognizance of the justices, has reference to a great variety of matters relating to the general police and civil concerns of the county (to the consideration of which the remainder of the first day of the sessions is generally exclusively appropriated), the chairman (assisted by the clerk of the peace) calling such matters on respectively, according to order prescribed by the rules of the sessions and their priority in his list of business for the day, furnished him by the clerk of the peace.

Business
proceeded
with on the
first day.

The first business is usually that of the receiving of the reports of the various committees of justices ; and here it will be well to explain the constitution and powers of such committees. It must be at once obvious that, to perform effectually the numerous important duties which, at quarter sessions, devolve upon the justices, and also to superintend, in the intervals of the sessions, such county matters as require superintendence, certain limited bodies of justices must be constituted for the purposes of inspection, and of recommending to the main body. This is accomplished through the medium of committees, varying in number according to the nature of the subject requiring attention. In many cases, these committees are directed by the Legislature itself to be consti-

Committees,
their
appointment.

tuted, such as Gaol Committees, and Committees for visiting Lunatic Asylums ; in others, they originate with the justices themselves, for the purpose of ascertaining and reporting upon various matters of importance within their jurisdiction. These committees, when not under the especial direction of an act of Parliament, consist of such a number of justices as may be thought requisite for the purpose intended. Chief among these, is the *Finance Committee*, whose duty it is to consider all matters of finance within the jurisdiction of the sessions. Then there are the committees of visitors of the county lunatic asylum, and of the private asylums throughout the county ; also the committee of visitors of the various gaols, and other committees for special purposes.

Their variety
and duties.

When a committee is appointed for a special purpose, their duties are pointed out by the order of sessions by which they are constituted ; but, when they are appointed in pursuance of the provisions of an act of Parliament, their duties will, for the most part, be found to be described in such act. Thus, by the 8 & 9 Vict. c. 100 (*An Act for the Regulation of the Care and Treatment of Lunatics*), and the 8 & 9 Vict. c. 126 (*An Act to amend the Laws for the Provision and Regulation of Lunatic Asylums for Counties and Boroughs, and for the Maintenance and Care of Pauper Lunatics in England*), the justices at their quarter sessions are directed to appoint a certain number of visiting justices, whose powers, when so appointed, are very fully described, and, it may be added, are of a highly important and responsible character. Also by the General Gaol Act (4 Geo. 4, c. 64, *An Act for Consolidating and Amending the Laws relating to the Building, Repairing, and Regulating of certain Gaols and Houses of Correction in England and Wales*),

the justices at their quarter sessions are to appoint for each gaol a certain number of visiting justices, whose powers (which are of a very ample kind) are fully described in the statute itself.

These committees respectively will, at each quarter sessions, present a report, if they are so directed by the order of sessions or the act of Parliament, by virtue of which they are constituted ; whereupon such report is taken into consideration, and such orders made thereupon as to the justices at sessions may seem reasonable, it being borne in mind that, where any powers are lodged with the sessions, such powers can only be ultimately carried out by an order of the whole body, it being the function of a committee only to ascertain facts whereon to enable the sessions to form a correct judgment, and to recommend a course to be adopted, which it is quite within the province of the main body to adopt or not. Their reports.

These committees are appointed as occasions require, or as directed by act of Parliament, and they remain in existence for such a length of time as may be determined on by the justices, or is regulated by statute, vacancies being filled up from time to time as they occur. Their duration—
Vacancies.

As the sessions are necessarily greatly guided in the conclusions to which they arrive, by the suggestions of their committees, it behoves those gentlemen who are placed upon them, to give their best attention to the subjects coming under their consideration. Having fully investigated the matter referred to them, they will prepare a report ready for presentation at the sessions, and, at the time we have indicated, it will be read by the clerk of the peace, when, upon discussion, its recommendations will be adopted or rejected, wholly or in part, according to the views which the sessions may entertain. The Presenting reports—
Proceedings thereupon.

reports of the various committees having been dealt with, the various officers of the county will present such reports as they are required to do, either by the rules of the sessions, or the provisions of particular enactments. Thus, the chaplains, surgeons, and jailors of the various gaols, are required to make a report at certain sessions of the various matters coming under their cognizance.

Appointing
county
officers.

Should there be any vacancies in the county officers, this will also be the proper time to fill them up, due public notice (where such is required) having previously been given of the intention of the sessions to proceed to such election.

Motions.

These various subjects having been dealt with, the sessions will, in their order, proceed with any motions of which due previous notice has been given ; the discussion upon these will be conducted as they are in public assemblies, the mover having a right of reply, and each justice speaking but once upon the subject, the majority prevailing, and the chairman having a right to vote, but possessing no casting vote.

These matters disposed of, and all others which may regularly have come under the attention of the sessions as properly to be disposed of upon the first day of the sessions, the court will adjourn to an early hour the next day, when the general judicial business of the county will be transacted.

CHAPTER XXIII.

PROCEEDINGS UPON THE TRIAL OF INDICTMENTS.

ON the resumption of business on the second day of the sessions, each court, supposing the sessions have been divided, will proceed with its own proper classes of cases, one court taking the criminal, and the other the civil department.

Proceedings
upon the
trial of
indictments.

As the proceedings in each are very dissimilar, it will be convenient to consider the course of practice pursued in the one and the other separately, and first, therefore, of the criminal business.

It is not intended in this place to enter at any length into the law as applicable to indictments, evidence, crimes, or their punishments, a knowledge upon these subjects being more properly to be obtained from some of those numerous works which are specially devoted to its acquirement. To do more than convey a general idea of the course of proceeding, would be to encumber these pages with a mass of matter inconsistent with their original object, and destructive of the practical purposes for which they were designed. Besides which, as the criminal court of the sessions is always presided over by a magistrate of great experience both in the law and practice of the sessions, assisted as he generally is by a few other magistrates, whose constant attendance upon these courts has made them familiar with their duties, all of whom have in addition the learning and experience of the clerk of the peace to call to their aid in cases of difficulty, it can rarely happen that an inexperienced or young magistrate, to whom especially these pages are addressed, will have any occasion to take an active part in the business or proceedings of the court. To these last-mentioned justices, the

soundest advice that can be given, is to attend carefully and regularly at the sessions, observe patiently the course of proceeding, read thoughtfully such works as treat upon the various topics relating to the quarter sessions and the law there administered, and thus qualify themselves for taking an active part in those duties of the sessions which in importance, utility, and dignity, are hardly to be surpassed.

Common
jury.

The first proceeding on the assembling of the court is usually that of calling over the panel of the common jurors, who are required to answer to their names as the clerk of the peace announces them; such jurors as do not attend nor furnish the court with any valid reason for their absence being usually fined. Of those who are present, twelve are requested to take their seats in the jury-box.

Arraigning
prisoners.

The grand jury having found and returned some bills, the prisoners to whom they relate, or some of them, are placed in the dock. It is usual with the court to dispose of the cases of *felony* before trying those of misdemeanor; and where this is the case, those prisoners for felony only, against whom bills have been found, are arraigned. Upon this, each prisoner is called upon by name, and the substance of the indictment being read to him, he is asked if he is guilty or not guilty. Should he plead "*guilty*," it remains only for the court to pass sentence upon him. It is, however, usual for the chairman, in the event of a prisoner pleading *guilty*, to explain to him the nature of the charge in its untechnical nature, and to inform him that he is not to expect any favour from so pleading, and then to ask him if he still wishes to plead *guilty*. This proceeding on the part of the chairman, condemned as it is by many as inviting a criminal to deny his guilt, is in truth in strict accordance with every principle of fairness and

morality. Knowing, as we do, that the cases are not unfrequent of parties, from various motives, actually accusing themselves of crimes which they have never committed; that charges apparently of great magnitude upon the indictment, when sifted at the trial, often resolve themselves into offences of a very minor character; that crimes are frequently made up of nice legal particulars, and that the distinctions between criminal wrongs and merely civil injuries are often of a very refined nature; it is always most satisfactory that a prisoner should be condemned alone upon proof of his guilt deduced from evidence, independent of his own admission. Should the prisoner plead "not guilty," the course of proceeding then will be for the clerk of the peace to inform him that the jurors who are about to be called are those who are to try him, and that if he wishes to object to any of them he is to do so as they come to the book to be sworn, and before they are sworn.

Arraigning
prisoners.

It may be here observed that, in addition to the foregoing pleas of *guilty* or *not guilty*, the prisoner may demur to the indictment. By demurring, he admits the truth of the indictment, but denies that it constitutes any indictable offence. Upon this the question is argued, and the court decide according to the view they take of the law as applicable to the subject. If they decide in favour of the prisoner, there is an end of the indictment; if in favour of the prosecution, the judgment is final, and sentence may at once be passed: (*Reg. v. Faderman and others*, 1 Den. C. C. 565.) For this reason demurrers are very unusual, particularly as a prisoner has usually the same power of objecting to the indictment by moving in arrest of judgment that he has by demurring, and with greater advantage.

Demurring.

Supposing that the prisoner pleads *not guilty*, The trial.

The trial.

the trial will then proceed in the following manner. The jury being sworn, the clerk of the peace will charge them with the prisoner; that is, he will state to them the general nature of the charge contained in the indictment (omitting all mention of any previous conviction, should the indictment contain any such), and telling them that the prisoner has pleaded not guilty, and it is their duty to find whether he be guilty or not guilty. Upon this, the case on the part of the prosecution will be commenced, but previously it will be competent to the prisoner to request that the witnesses against him may be kept out of court until they are respectively required to be examined—a request with which the court should at once comply, ordering, however, that all the witnesses on *both* sides should leave the court, and come in only as they are called. To this order an exception is always made in favour of legal men, and usually also in favour of medical witnesses, and witnesses also to character. It may, however, be observed, that even should this order in any instance be disobeyed, it will not entitle the court to reject the evidence of the witness, such contumacious conduct being to be dealt with only as a contempt of court, and exposing the testimony of the party to discredit, and himself to animadversion: (see *ante*, p. 76.)

Address of
counsel.

If the prosecution be conducted by counsel, its management and direction will be entirely in his hands, subject, of course, to the supervision and correction of the bench, as upon trials in the Superior Courts, with which most persons are to a certain extent familiar. If no counsel are engaged to prosecute, the bench themselves will perform that function, it being, however, in such latter case improper for the court to make any address to the jury in opening the charge. At those sessions at which counsel attend, it is

most desirable that the business of prosecuting should be entirely confided to their hands. The union in the same person of the functions of advocate and judge is not only most unseemly in itself, but frequently leads to scenes of a character highly derogatory to the dignity of the court. In cases in which a prisoner is defended by counsel, the absence of counsel for the prosecution is always greatly to be deplored; in such cases it not unfrequently occurs, that an objection is started either by the bench or the prisoner's counsel to some course of proceeding which the one or the other wishes to pursue; to refer such objection, therefore, to the decision of the very party who either takes or opposes it is little in accordance with that principle of impartiality which should ever characterize proceedings in a court of justice. So too, in such a case, the prisoner's counsel may call witnesses. These witnesses, whether telling the truth or not, ought to be subject to a searching cross-examination on the part of the prosecution, a duty which cannot be performed by the bench without exposing it to the suspicion of taking a one-sided and partial view. Again, in such a case, a reply may be essentially necessary for the interests of justice; the evidence for the prisoner may be one tissue of falsehoods, glossed over by a colouring of truth, which nothing less than the practised acuteness of a trained advocate may be enabled to detect. The chairman cannot reply, but he has to sum up, and, being desirous for the best ends of justice, to disabuse the minds of the jury of any false impression created by the possibly fabricated evidence adduced for the prisoner, such summing up becomes in reality a reply; and thus the chairman, who by his office ought to be far above the suspicion of being influenced either the one way or the other, and whose anxious duty should appear to be that of holding

Address to
the Jury.

Addressing
the jury.

evenly the balance of justice, becomes the advocate for the prosecution, and exposes the administration of justice to the worst possible imputation by which it can be assailed—that of being partial and unfair towards the accused. Against an evil so great as this no considerations of expense ought for a moment to be urged. Nor is it to the point that in reality partiality does not prevail. That the only aim of the bench is to do justice between the Crown and the prisoner is unquestionably true, but whilst with the general public the real truth is often obscured by the false appearance, it but too often occurs that that leaning on the side of the prosecution, which is necessary from the defence set up, becomes a confirmed prejudice, and induces the bench to exhibit a feeling highly derogatory to the impartial administration of justice.

Examination
of witnesses.

If the prosecution be conducted by the bench, it is usual for the chairman to have the assistance of another magistrate to examine the witnesses from the depositions returned by the different justices' clerks, the chairman himself taking down the evidence as it is given. At the conclusion of the examination in chief of each witness, the prisoner, if undefended by counsel, should be asked by the chairman if he has any questions to put to such witness, telling him that that is his time to cross-examine him, if he desires to do so. The prisoner should then be permitted to ask any questions which may have relevancy to the matter in question. It is not uncommon for some benches of justices to require the accused to put every question to the witness through the chairman. This practice, although it generally insures the questions being put in their proper and most effective form, is, nevertheless, incorrect, and, if insisted upon in opposition to the expressed wish of the accused,

would open the entire trial to the objection of having been irregularly conducted. If the accused would himself rather that his questions should be put through the chairman, there cannot be the least objection to their being so put; but it must be remembered that it is the *right* of every man accused of crime, himself to cross-examine the witnesses brought against him. A question may lose half its effect from being dealt out second hand, and not coming direct from the party at whose instance it is put. Many a witness will not hesitate to evade a question when coming from the mouth of a person ignorant of its secret meaning, or its peculiar bearing upon the case, who will hardly venture to do so when put by a person to whom, as he is aware, all the more obscure facts connected with the charge are well known. Besides which, much of the point of a question will often depend upon the peculiar manner and emphasis with which the interrogation is made, which *he* alone who is interested in the answer ought best to know how and when to adopt. If the accused has the assistance of counsel, the cross-examination will, of course, be left in his hands.

Examination
of witnesses.

The entire case for the prosecution having been concluded, the accused will be called upon to make his defence; this he will do by addressing the jury, if he think proper, and then calling any witnesses he may have in his behalf. If he have counsel, the address to the jury will, of course, be left in his hands. The calling and examination of the witnesses for the defence will be subject to the same rules as are observed in the case of witnesses for the prosecution. Should a new case be set up for the defence, requiring evidence to rebut it, such evidence may be called at the close of the prisoner's case, whereupon he or his advocate will have a right to reply upon such evidence, and then, if the prosecution be

The defence

conducted by counsel, such counsel will have a general reply upon the whole case.

The evidence on each side being closed, there will or will not be a reply on the part of the prosecution, according to circumstances. If the prisoner has called no witnesses, or those only to his character, there will be no reply; although where witnesses are called to character, in strict right the counsel for the prosecution has a right to reply, it is one that is never exercised, and which has, therefore, in practice, been completely abandoned. If the indictment contain a charge that the prisoner has been before convicted of felony, then, to rebut the effect of evidence of good character, proof of such previous conviction may be adduced in evidence.

The
summing up.

The summing up of the chairman will next follow, and in this will consist the most arduous and anxious duty which it will fall to his lot during the sessions to perform. Relying, as juries naturally will to a very great extent, for safe and sound guide in the views that ought to influence them in the decisions to which they will have to arrive, upon the impartiality, experience, and wisdom of the chairman, the fate of the accused will, in very many cases, depend greatly upon the manner and spirit of the chairman's summing up. In cases which are tolerably self-evident, the duty of the chairman will be of exceedingly easy performance, requiring, possibly, not even the labour of going over the evidence; but in those of a more obscure description, talents and capabilities of a very superior order may be required to lay the case clearly and judiciously before the jury. We have before observed upon the desirableness of prosecutions being conducted by counsel, and at no stage of the proceeding is this more conspicuous than when the chairman proceeds to sum up. The great virtue of a summing up is, perfect impar-

tiality,—that is, an absence of all feeling, or the appearance of it, either the one way or the other, and a strict adherence to the facts of the case as elicited by the evidence. In leaving the case to the jury, the chairman should be particularly guarded not to express any opinion of his own as to the guilt or innocence of the accused; to form an opinion as to this, is the peculiar function of the jury. To explain the proper legal effect of the evidence, to point out the weighty portions of it, to clear it of any obscurity by which it may be beset, to set in its clear and proper light all that properly applies to the case, and in cases where the jury are likely to be led away by false reasoning, to endeavour to dissipate the error, without, however, condescending to make a formal reply upon anything that has been advanced: in fact, to place the entire case, both on the part of the prosecution and that of the prisoner, in the most truthful light, accompanied by such observations as to the rules of law, as the nature of the case may suggest, never forgetting to caution the jury that, before they pronounce a verdict of guilty, they must be satisfied beyond reasonable doubt of the prisoner's guilt, is the proper province of the chairman in this highly responsible portion of his duties. Summing up.

If the jury return a verdict of “not guilty,” Verdict. and there is no other charge against the prisoner, it will be proper to direct him to be forthwith discharged. It is customary at some sessions not to permit an acquitted prisoner to be set at liberty until the grand jury are discharged, and in some cases not until the end of the sessions; but although from the fiction that the sessions last but a single day such a course is unquestionably lawful, it undoubtedly savours of harshness, and is utterly at variance with that spirit of enlightened humanity which ever ought to charac-

terize the administration of criminal justice. Should the jury return a verdict of "guilty," it will then be the right time, should the indictment contain a statement of the prisoner's having been before convicted of felony, to give the regular proof of such former conviction, and require the jury to say whether or not the prisoner is the same person.

Punishment. Supposing the prisoner is convicted of the offence charged in the indictment, it then remains only for the court, after the prisoner has been asked if he has anything to say why judgment should not be passed upon him, to pass sentence. To lay down any general rules upon the subject of awarding criminal punishments is a matter of the greatest difficulty. As no two cases will be precisely similar in their criminal enormity, and as punishments ought, as far as is practicable, to be duly proportioned according to the offence, no fixed rule as to the extent of punishment can be suggested. The Legislature, seeing the difficulty of the subject, has wisely left a very wide latitude within which the presiding judge can exercise his discretion. It may, however, be observed that for a first offence, when the crime is one of simple larceny, it is usual to pass a sentence of not more than a very few months' imprisonment, with the hope that the discipline of the gaol during such a limited period will be sufficient to work a reformation in the offender. The chairman, however, should warn the prisoner against committing another felony, since, should he do so, he will be liable to be transported, and will probably be so.

Transportation. Upon the subject of awarding the punishment of transportation, some remarks may properly here be made. There is no question whatever that if an offender be incorrigible, it is idle to subject him merely to a term of imprisonment, and that transportation in such a case is the best

punishment that, both for the criminal and the public, can be awarded. Many cases will, therefore, be continually brought under the cognizance of the sessions, upon the offenders in which no other sentence can properly be passed than that of transportation. But in the vast majority of cases in which the sessions have the power to transport, they may well pause before inflicting so severe a punishment. In some counties the justices act upon a general rule always to transport for certain offences ; thus, for sheep and cattle stealing, and for a felony committed after a previous conviction, the punishment invariably awarded is transportation. To act upon a rule of this kind is certainly most censurable. The Legislature, in giving a latitude as to punishments, intended that a wise discretion should be exercised in each case, and had it intended that certain offences should be visited invariably with transportation, that punishment would have been declared as the only one to be awarded. To deprive themselves of that discretion with which the Legislature has invested them, is to administer criminal punishments more as automations than as discerning individuals. If all cases were exactly alike in their criminal enormity, one uniform punishment for them would be unobjectionable ; but, whilst society recognises a vast difference in criminality between the destitute and unfortunate man, who, under the stimulus of a starving family, steals a lamb, and the wholesale sheepstealer, who drives away an entire flock, to award to each the self-same punishment of transportation, is, to say the least, a most blind and unsatisfactory way of dealing with criminals ; nor with reference to the rule of always pronouncing a sentence of transportation when, for a felony committed after a previous con-

Transportation.

viction for felony, can it in every case be warranted. It is true, that where a party, having committed an offence for which he has received punishment, on his release from gaol, returns again to the commission of similar, or worse, crimes, the prison discipline may well be taken to have produced no good results, and some severer punishment is clearly requisite to be dealt out to him. But it may be, that between the first and the second offence, very many years may have elapsed, during which the party may have conducted himself with the greatest propriety; or both the first and second offence may have been of a very venial nature, such as the purloining by a servant from his master of a little corn to give to his master's horses; or the stealing by a dairy-maid of a little milk from her master's cow. Little really need be said in censure of a rule, which, irrespective of the peculiarities of cases, metes out one uniform punishment, and that, too, of a highly penal and awful description; nor should we have dwelt thus long upon the subject, but from the knowledge that such a rule, however irrational and opposed to the uniform practice of the Superior Judges, does, nevertheless, obtain in many counties in England.

Before quitting this subject, it may be mentioned, that should, in the course of the trial, any question arise touching the admissibility of evidence, or the correctness of any proceeding, the bench will be the proper parties to determine it, and that their determination is final, except that they have, in certain cases provided for by the 11 & 12 Vict. c. 78, power to submit such question for the consideration of the court for the determination of Crown Cases reserved.

We should also recall attention to the powers of the justices to direct a prosecution for perjury

under the 14 & 15 Vict. c. 100, s. 19: (see *ante*, p. 97.)

CHAPTER XXIV.

THEIR DUTIES IN REFERENCE TO APPEALS.

WE will now turn to the proceedings in the court where the civil legal business of the sessions is disposed of. In this court the various applications for stopping up or diverting highways, to obtain certain licences, &c. are made, and here also are heard and determined the various appeals which may be entered against the convictions or orders of justices. Order of proceeding.

Upon the sitting of the court, it is usual to commence the business of the day by calling (in the order of their seniority) upon the counsel who attend the sessions to move any unopposed or *ex parte* motion; this concluded, the appeals will be called on in the order in which they have been entered. These matters will, however, greatly depend upon the rules of the sessions, it being quite competent for the justices to frame such regulations for the convenient conduct of the business as they may think expedient.

In considering the subject of appeals, we shall confine ourselves exclusively to the ordinary practice upon them in general, considering, as we do, that to enter into those peculiarities which appertain to appeals in particular instances, will be beyond the province of these pages. For the most part, the various kinds of appeals differ little from each other; the same principles in fact regulating them all. Such a general view, therefore, of the nature and practice of an appeal

as will convey an insight into its peculiarities, will suffice to accomplish the purposes intended in this work.

Appeals.

On the appeal being called on, it will be for the respondents—that is, the parties who seek to support the order or conviction appealed against—to make out their case. But before doing so, it will be competent for them to require the appellant to show that he has placed himself in such a position as to have a right to have his appeal heard. Thus the appellant may be required to prove that he has given due notice of appeal, or (where such are required) that he has served proper grounds of appeal, and entered into a sufficient recognizance.

All preliminary matters being settled, the leading counsel for the respondents will open his case to the court on the merits, and will call his evidence in its support, he not being confined to the same evidence as that adduced on the making of the order or conviction, unless so provided by act of Parliament. The witnesses, of course, are subject to the cross-examination of counsel on the opposite side; and questions as to the admissibility of evidence will be disposed of by the bench in accordance with the practice of the Superior Courts, which should in all cases be as closely followed as circumstances will permit. When the respondents are represented (as is generally the case) by two counsel, it is usual, on the conclusion of the evidence, for the junior to sum it up, pointing out the manner in which it bears upon the case, and enforcing upon the bench its sufficiency.

If, at the conclusion of the respondent's case, the bench are of opinion that the evidence does not support the conviction or order, they direct the same to be quashed. If, however, a *prima facie* case is established, it will then be the duty of the counsel for the appellants to enter upon

their case. This is done by the leading counsel first addressing the bench, and then (if he have any), calling his witnesses, who will, of course, be subject to cross-examination by the counsel for the respondents. At the conclusion of his evidence, the junior counsel (if there be one) will be privileged to sum up the evidence, as has been before mentioned, with reference to the case for the respondents. If the appellants have produced any evidence (but not otherwise), the senior counsel will be entitled to a reply upon the whole case, whereupon the bench will consult together as to their decision.

In considering their decision, all the justices who have been present and have heard the case are entitled to take part; no one, however, who is personally interested in the result (unless the objection is waved by the contending parties) being of the number. Each justice has a vote, and there is no casting vote allowed to the chairman. In the event, therefore, of there being an equality of votes on each side, no judgment is pronounced, but the case should be adjourned to the next sessions. The decision of the justices is pronounced by the chairman, and it is unusual for any reasons to be assigned. When an appeal has properly come before the justices, and their proceedings are regular, their decision upon it is final, and cannot be reviewed against their consent by any other tribunal, even though they may have come to a decision palpably at variance with the evidence; nor is their mistaken rejection or admission of evidence any ground for the interference of any Superior Court, the justices at sessions being to all intents and purposes the sole, final, and absolute judges in the various matters of appeals brought before them. If, however, they have any well founded doubts upon any point of law, it is competent to them (where the writ of *certiorari* is not taken away),

Appeals. to grant a case embodying the facts, and raising the question of law for the opinion of the Court of Queen's Bench. This case is drawn and agreed to by the respective counsel in the case, and approved of by the chairman, who attaches his name to it. Should a case be granted, the execution of the judgment of the sessions will be suspended until the decision of the court above.

Costs. The court, in deciding an appeal, also will determine the question as to costs. A very wide discretion is herein allowed, it being quite arbitrary with the bench whether or not they will allow any costs; and, if any, to what amount. Cases will unquestionably sometimes arise, upon the determination of which, the fairest course is to disallow costs altogether; such as where the defeated parties have been led into litigation by the sinister conduct of their opponents, or where some important question of law arises which, for the future guidance of parish officials, it was necessary should be formally settled. In these, and many other similar questions, it will be no injustice to either party to let each bear his own costs. But, in by far the greater number of appeals, the successful party will obviously be entitled to his costs, and they should accordingly be awarded. In many counties, it has long been the practice to give only a nominal amount of costs—some forty shillings or so—a sum quite inadequate to cover the real charges incurred by the party in whose favour the judgment is given. Such a practice is obviously at variance with the rule which has for centuries prevailed in the Superior Courts, where the full costs of the successful party (with few exceptions) are uniformly allowed, and is opposed to the obvious intentions of the Legislature, as evinced by the language employed in conferring the power to give costs, whereby, in giving them, the justices

are directed to award such an amount as may ^{Costs.} appear *just and reasonable*. As an illustration of this, we may refer to the recent case of *Reg. v. The Justices of Glamorganshire* (4 New Mag. Cas. 94; 4 New Sess. Cas. 110; 19 L. J. 172, M. C.), where it appeared that the sessions, upon the application of the successful party for the costs of an appeal, considered themselves bound, by a general order of sessions, that 40s. costs only should be allowed on appeals, and acted thereon, and awarded only 40s. costs; in which case it was held by the court above, that such a general rule was unreasonable, and that the sessions were bound to consider the question of costs, irrespective of the former order of sessions, and to award to the successful party a fair and reasonable sum for the costs incurred in supporting the appeal. In giving judgment, Mr. Justice Coleridge said: "The simple question before me is, whether or not the justices have considered the question of costs, and exercised a discretion upon it; if that question be left in doubt, the *mandamus* ought to go. Now, I must say, it seems to me that the evidence is all one way. It appears that there is a rule of the sessions, made at the Epiphany Sessions of 1842, that 40s. costs only, in future, be allowed in appeals. No doubt there was some deliberation between the justices before they pronounced their decision, but that deliberation was not as to the fair amount of costs to be awarded to the appellant, nor whether 40s. was enough, but whether or not they were bound to adhere to their general rule, and give only 40s. They seemed to think that they were, and all that was done was in adherence to that general rule. I do not apprehend any inconvenience in making this rule absolute. I have no doubt, after the opinion that has been expressed by this court, that the justices will enter into the ques-

Costs.

tion of costs, and consider the proper sum to be awarded." The principal, therefore, upon which the sessions should act in those cases in which they decide upon awarding costs, is to give such an amount as in their discretion they think just and reasonable, with reference to the particular case itself. The costs, when granted, are either fixed by the bench at a sum certain, or the clerk of the peace is directed to tax the costs during the sessions, and the bench then award the balance.

General
business.

Although the foregoing is a correct review of the principal stages in an appeal, there is a variety of collateral and incidental proceedings which occasionally arises: such as the entering and respiting, and adjourning of appeals—quashing orders, or convictions for non-appearance of respondents—making a special entry where the order is quashed, not upon the merits—amending statements of grounds of removal or appeal, or the order of removal—amending poor rates, &c.; which, inasmuch as they involve no difficulty in practice, and are to be thoroughly comprehended alone by practical experience, may well be dismissed without further notice. Upon the subject generally of the quarter sessions, it may be observed, that no amount of book-teaching will convey anything like a clear conception of the business itself, which, to be learnt, as alone it can be, thoroughly and practically, the quarter sessions must themselves be patiently and carefully attended. The young justice will rarely be called upon to take any active steps in the performance of the legal portion of the business of the sessions, which will be confided to magistrates of considerable seniority, and great practical experience. At the sessions themselves, then, should the inexperienced justice seek for information; not, however, neglecting the study

of books of practice, which, though they cannot effectually convey a perfectly accurate knowledge of the subject, will, nevertheless, impart to him an amount of information highly useful in the course of his inquiries.

CHAPTER XXV.

THE WRIT OF MANDAMUS.

HAVING, in the preceding chapters, considered the various duties which either in or out of sessions justices may be called upon to perform, we now come to the discussion of that highly important branch of magisterial law which has for its object, either the enforcing of these duties when neglected, or restraining their performance when they are being exceeded.

Whenever a duty is cast upon a justice, the law requires that he shall promptly fulfil it; and if, being properly requested to perform any act within the scope of his authority as a justice, he, without any sufficient reason, declines to do so, the Court of Queen's Bench, on application for the purpose, will interpose to compel him to do his duty. The means which the court above uses for this purpose, is that of a writ of *mandamus*, which has been well described as "a high prerogative writ issuing from the Court of Queen's Bench, directed to the judges of inferior courts of judicature, corporations, public bodies, and others upon whom the law casts a public duty, alleging that complaint had been made of their refusal to perform that duty upon some particular occasion, and commanding them, in

When a *mandamus* will issue to justices.

When a
mandamus
will issue.

the Queen's name, to do it, or that they show cause to the contrary thereof, lest in their default the same complaint should be repeated."

Whenever, therefore, either collectively or individually, whether in sessions or out of sessions, justices are required by law to do an act and they refuse to perform it, the Court of Queen's Bench will thus interpose by its writ of *mandamus* to compel them to do the act required. So comprehensive is this proposition, that it applies to every class of duties coming within the scope of the justices' functions, and there is not a single instance of which we are aware that forms an exception to this general rule. If, therefore, a matter is properly brought under the attention of justices, whether they be acting collectively at sessions or individually, they have no right to decline to interfere, but are bound to enter into the subject, and to the best of their judgments adjudicate upon it.

It must not, however, be supposed that a justice is bound to be always in the way in order to carry out the particular purposes of the law. No restriction is imposed upon him in this respect, and he is free to attend to his duties or not as is most convenient to himself, unless he is specially required by some legislative or judicial direction to attend to perform a particular act. Thus, if a justice have left the division in which he usually acts, or has altogether quitted the locality of his jurisdiction, no *mandamus* would require him to return to fulfil any particular duty. It is only when being in the locality in which his assistance is required, and upon a request and refusal to act, that the Court of Queen's Bench will interfere to compel him.

When it will
not issue.

But to render a justice subject to the compulsion of the writ of *mandamus*, it must be clearly shown that the parties requiring him to act have done all that is necessary to give the

justice power to do it; since to warrant this writ in issuing, it must be clearly shown that the justice not only had jurisdiction, but that there was no reasonable ground for his declining to act. If there be any well-founded doubt as to whether or not in the particular case the justice has power to entertain the question, or if, from defect in the proceeding, he cannot further proceed without incurring personal risk, the court will not interfere; and these rules apply with equal force to cases where the justices act as a body (as at their quarter sessions), as when acting individually.

When it will
not issue.

Nor will the court interfere with the determination of justices when it has been come to in the exercise of a *discretion* vested in them, however opposed that determination may be to the view the court above would have taken if the matter had originally come before them for their consideration, the Superior Court not sitting as a Court of Appeal to review the decisions of justices, but as a tribunal only to see that inferior bodies perform the functions with which they are invested. If the justices have power to decide in any given case, and they do decide, the court above cannot interfere with that decision, notwithstanding it may be unwarranted by the facts or opposed to good sense. The general rules upon this point are well explained in the case of *Reg. v. Bolton* (1 Q. B. 66), where all the cases upon the subject are reviewed, and from which it is to be gathered that when a conviction or order of justices is returned into the Queen's Bench, and the proceedings are regular in form and in practice, and the case is one over which the justices had jurisdiction, the court will not hear affidavits impeaching the justices' decision on the facts, nor, if they return the evidence, will it review their judgment thereupon, for that the test of jurisdiction

is whether or not the justices have power to enter upon the inquiry, and not whether or not their conclusions in the course of it are true or false.

When justices should decline to act, except under a *mandamus*.

Whenever, therefore, justices have a well-founded doubt as to whether or not they have jurisdiction over the subject-matter brought before them, or whether or not all the facts exist which are requisite to warrant them in proceeding, they will do well to pause.

But whilst the court above will interfere in cases in which the justices have jurisdiction and decline to exercise it, the justices themselves should hesitate to proceed in all cases where a doubt overhangs the question, to the end that they may not, by proceeding in a case where that jurisdiction fails, involve themselves in difficulties which may result in much pecuniary loss. Whenever justices have a substantial doubt as to whether or not they have jurisdiction over the subject-matter brought before them, or whether or not all the facts exist which are necessary to justify them in proceeding, they will do well to pause, and to decline to act until the opinion of the court above is taken, in the shape of an application for a writ of *mandamus*. This course is, in many cases, a most convenient one; for it thus enables the justices to obtain the opinion of the Superior Court upon the subject, and affords them a protection in the discharge of their duties, and this, too, without necessarily putting them to any cost, since the party to show cause against the application for the *mandamus* is usually the one who denies the jurisdiction of the justices, and who, therefore, is interested in opposing the issuing of the writ; or, where the justices themselves oppose the application, their costs, if they are successful, are almost invariably awarded to them.

The proceedings, in order to obtain a writ of

mandamus to compel justices to do a certain act, are briefly these:—The party complaining causes an application to be made upon affidavit (stating all the necessary facts) to the Court of Queen's Bench, which, if a probable case be made out, grants a rule, calling upon the justices and the party on the other side, to show cause why a writ of *mandamus* should not issue, commanding such justices to do the act required. If the application is granted, a rule issues from the Crown Office accordingly, copies of which are served upon the justices and other parties who are called upon by the rule to show cause. The proceedings to obtain the writ.

As regards showing cause against the rule by the justices, this will be dependent upon circumstances. If the application be with reference to some proceeding at sessions, the litigant parties, who are interested in supporting the decision, will probably be those alone who will interest themselves in opposing the rule, and the justices will content themselves with watching the proceedings, and acting afterwards in accordance with the decision of the court above. Should they, however, feel more deeply interested in the question at issue, as where it may involve the legality of some rule or practice framed or adopted by themselves, and think they should vindicate their proceedings themselves, they will do well to instruct the clerk of the peace to take all necessary steps for the purpose. If, however, the motion have been made with reference to some proceeding of justices at petty or special sessions, then, whilst it will equally be open to consider whether or not the duty of showing cause will not properly be left to the party in whose favour the justices have acted, yet, if they determine upon themselves opposing the rule, they will properly instruct their clerk to take all necessary steps for the purpose. Showing cause by justices.

The argument.

The rule, on coming on for argument, is either made absolute or discharged; and, if the latter, with or without costs, at the discretion of the court. If made absolute, the writ of *mandamus* issues out of the Crown Office, in which case the justices will either obey it by performing the act they are called upon to perform, or they will make a return, setting forth the reasons why they have *not* obeyed it. In many cases of doubt and difficulty, the court will direct the writ to issue, in order that a return may, in fact, be made, the better to deliberate upon the facts and law; and in order that the parties interested may have an opportunity of questioning their decisions, upon a writ of error. Upon application also for that purpose, where the justices are indisposed to make a return, the court will permit third parties to make a return to the *mandamus*, if they can show that they have an interest in the question involved.

The substitution of a rule for the writ.

It may here be observed, that, to facilitate justice, and make the performance of the duties of the justices more easy and the better protected, the 11 & 12 Vict. c. 44, s. 5, has given a further process in cases where a *mandamus* has before been the only one, by enabling the party aggrieved to apply for a rule, calling upon the justice or justices, and the party to be affected by the act of the justice or justices, to show cause why such act should not be done; and it enacts, that if, after due service of such rule, good cause shall not be shown against it, the court may make the same absolute, with or without, or upon payment of costs; and the justices, upon being served with the rule absolute, are to obey it, and do the act required, and no action or other proceeding is to be commenced or prosecuted against such justice or justices for having obeyed such rule. This provision, however, whilst it does not in any way abrogate the

proceeding by *mandamus*, is applicable only to such simple questions as can be conveniently argued and disposed of upon a rule, and not to the more important questions which will still be the proper subjects of an application for a writ of *mandamus*.

To pursue this subject further in these pages can hardly be desirable; since to go deeper into it would involve the necessity of considering the entire law of *mandamus*, and the practice upon it—matters which should be sought and learned in the many useful volumes specially devoted to their consideration.

CHAPTER XXVI.

THE WRITS OF CERTIORARI AND HABEAS CORPUS.

IN the preceding chapter we have explained the means whereby justices are compelled to fulfil those duties which the law has cast upon them. It will be now convenient to consider by what means and in what manner the proceedings of justices are restrained or reversed where they either act without jurisdiction or exceed it.

The Court of Queen's Bench being invested with a general superintending power over all courts of inferior jurisdiction, and an exclusive superintendence over inferior criminal tribunals, is wont to exercise that jurisdiction where its interference is requisite to curb the proceedings of such courts through the means of its writ of *certiorari*, which is defined to be an original writ directed in the Queen's name to the judge or officers of inferior courts, or to justices at sessions or out of sessions, commanding them to certify or to return the records or proceedings in

When the writ of *certiorari* will issue.

a judicial matter depending before them, to the end that such further may be done thereon as of right and according to the law and custom of England may seem fit to be done.

When a
certiorari
will issue.

Unless (as in some cases it happens) the writ of *certiorari* is expressly taken away, it is the ordinary mode of testing the legality of the proceedings of justices where those proceedings have assumed the shape of a conviction or order. Its proper purpose (as far as it concerns the subject of their pages) is that of getting a conviction or order of justices removed into the Court of Queen's Bench to the end that it may be quashed for some defect apparent upon its face. The granting of the writ, though not a matter of right, is never refused if a probable ground be shown that the court below has exceeded its powers. The object of the writ is to enable the court above to ascertain whether or not the justices had jurisdiction to do the act complained of. If it appear upon the face of the conviction or order that the justices had in fact jurisdiction, the court will not inquire into the question as to whether or not they came to a sound conclusion; such court not being a court of appeal in these cases, but merely a tribunal to keep inferior courts within the limits of their proper functions. If, therefore, the conviction or order be good upon its face, no allegations can be received impeaching the correctness of its statements, nor can any extrinsic evidence be adduced to contradict or explain its obvious meaning, there being but one purpose for which such evidence can be adduced, namely, to show that the case was not one over which the justices had any jurisdiction, and that their entering upon it in the first instance was wholly unwarranted and illegal: (*Brittain v. Kinnaird*, 1 Bos. & P. 432; *Care v. Mountain*, 1 Man. & Gr. 257; *Reg. v. Bolton*, 1 Q. B. 66.)

By the 13 Geo. 2, c. 18, s. 5, the *certiorari* must be moved for within six calendar months after the conviction or order shall have been made, which period runs from the time when the conviction or order becomes operative, though more than six months may have elapsed since the actual making of such conviction or order, as where it has been the subject of an appeal, in which case the time would commence running from its determination.

When *certiorari* to be moved for.

By the same statute it is provided that no *certiorari* is to be granted "unless it be duly proved upon oath that the party or parties suing for the same, hath or have given six days' notice thereof in writing to the justice or justices or to two of them (if so many there be) by and before whom such conviction, judgment or order, or other proceeding shall be so had or made," &c.

Notice of motion.

The applicant, being prepared with all necessary materials, causes a motion to be made to the court for a rule calling upon the justices to show cause why a *certiorari* should not issue requiring them to return the conviction and order complained of. If sufficient grounds are presented to the court, the rule will be granted. This will be a rule *nisi*, and upon its return, the justices will be at liberty to show cause. If the court deem the objection well-founded, it orders the rule to be made absolute for the writ to go. If, however, cause is sufficiently shown, the court discharges the rule with costs.

The application for the writ.

It is not uncommon for the court, upon the application of the party seeking the rule, to grant the *certiorari* in the first instance, upon which, without argument, the conviction or order is returned, and, by due process, the case is placed in the crown paper for argument, when, in its turn, it comes on for determination, and in that way receives the judgment of the court. This, indeed, would seem now to be the most usual

course pursued, since it avoids the delay and uncertainty of showing cause against the rule.

If the application be made during vacation, it is made to a judge at chambers, who, instead of granting a rule, directs his fiat to issue for the *certiorari*.

Recogni-
zance.

Before the writ of *certiorari* can issue, the party applying for it, must, under the 5 Geo. 2, c. 19, enter into a recognizance as therein described before a justice, &c., to prosecute the writ and pay costs if the judgment or order be confirmed.

Showing
cause.

The same views and considerations which will operate (as before-mentioned) in showing cause against an application for a writ of *mandamus*, will apply to the case of a motion for a writ of *certiorari*, with this additional one, that by sustaining their conviction or order, they thereby protect themselves from the consequences of an action of trespass or false imprisonment, which might with success be sustained against them, if their conviction or order were quashed, and they had before carried it out by distress or imprisonment.

Returning
conviction.

Supposing the *certiorari* to have issued, say, to remove a conviction, it will in due course, together with the recognizance attached, be delivered to the justices whose conviction it purports to remove. The justices then, or one of them, to whom the writ is directed, will append to it the conviction or order mentioned; or if they have returned them to the sessions, a copy of it, stating the fact of such return to the sessions. The forms will be found fully given in Burn's Justice, tit. "Certiorari." The documents will, at the proper time, be returned into the Crown Office.

Amending
conviction.

It should here be observed that the conviction actually returned, need not be in the same form as that originally drawn up, even though a copy

of the original has been given to the defendant. If the conviction returned be warranted by the facts, it is wholly unobjectionable that it assumes a different shape to that originally drawn up, the justices being at perfect liberty to substitute a perfect for an imperfect conviction (if the real facts justify the substitution) at any time before it is actually brought before the court for adjudication : (*Chaney v. Payne*, 1 Q. B. 712 ; *Sellwood v. Mount*, 1 Q. B. 729 ; *Charter v. Greame and Another*, 18 L. J. 73, M. C.)

Should the *certiorari* have issued irregularly, as from a non-compliance with necessary previous requisites, the court will, upon application, quash it. *Certiorari* issued irregularly.

If the judgment of the court be in favour of the conviction or order, it will, on motion made for the purpose, be sent back by a writ of *procedendo* to the justices from whom it came, in order that it may, by them, be duly carried into execution. *Procedendo.*

Although, as we have before seen, the justices are warranted in amending a conviction at any time before actually used, no such power extended to orders, which being final from the moment they were signed by the justices, were from that time incapable of being amended. To remedy this inconvenience, a clause was introduced into the General and Quarter Sessions Courts Procedure Act (12 & 13 Vict. c. 45) enabling the Superior Courts, and also the Courts of Quarter Sessions, to amend both convictions and orders, under certain circumstances. The 7th section, after reciting that, in many cases, where justices of the peace are by law empowered to make orders or to give judgments, great expense and frequent failure of justice have been occasioned by reason that such orders or judgments have, on appeal to the general or quarter sessions of the peace, or on Amendment of convictions and orders.

Amendment. removal by *certiorari* into the Court of Queen's Bench, been quashed, or set aside upon exceptions or objections to the form of the order or judgment, irrespective of the truth and merits of the matters in question, enacts for remedy thereof —

That if upon the trial of any appeal to any Court of General or Quarter Sessions of the peace, against any order or judgment made or given by any justice or justices of the peace, or if upon the return to any writ of *certiorari* any objection shall be made on account of any omission or mistake in the drawing up of such order or judgment, and it shall be shown to the satisfaction of the court that sufficient grounds were in proof before the justice or justices making such order or giving such judgment to have authorized the drawing up thereof, free from the said omission or mistake, it shall be lawful for the court upon such terms as to payment of costs as it shall think fit, to amend such order or judgment, and to adjudicate thereupon as if no such omission or mistake had existed, &c.

The power thus given to amend, though forming a considerable security to justices against those serious consequences to themselves which heretofore often arose out of very trivial and formal errors, must not be too confidently relied upon, nor be a reason for dispensing with that due care and caution which should ever be observed in framing such important documents as convictions and orders, since, for any excess of jurisdiction in fact, the justices will, as heretofore, be completely liable.

In considering hereafter the subject of actions against justices, we shall have occasion, incidentally, again to refer to the writ of *certiorari*.

In the event of the defendant being in actual custody upon a warrant from a justice, and his being desirous to question its validity, he will apply to the court above for a writ of *habeas corpus*, which, if sufficient grounds be shown to lead the court to believe that the imprisonment is illegal, will at once be granted. The rule for the writ is, according to the regular

Writ of
habeas
corpus.

practice, absolute in the first instance, the discussion as to the legality of the imprisonment taking place upon the return of the writ ; a custom, however, has lately prevailed of obtaining only, in the first instance, a rule to show cause why the writ should not issue, which enables the validity of the commitment to be discussed on, showing cause against such rule, and without putting the parties to the expense and inconvenience of issuing the writ, and bringing the defendant into court upon its return : since, should the rule be made absolute, the defendant, without further proceedings, obtains his discharge, and if the rule be discharged, the defendant remains in custody. In either case the justices have notice served upon them of the application, and on the day of the return of the writ, or showing cause against the rule, should be prepared to support their commitment, since to themselves personally it will be of the highest consequence that the proceedings should not be reversed, an action for damages being the probable result of a successful application for a writ of *habeas corpus*. How
obtained.

The writ itself is served upon the gaoler in whose custody the defendant happens to be, notice of its having issued, and when the return will be made, being given to the committing justices and the prosecutor ; upon this the clerk to the justices will put himself in communication with the gaoler and the prosecutor, with the view to arranging as to showing cause, and such clerk it will usually be who will prepare the return for the gaoler and see to the case being properly met in court. Service of
writ.

CHAPTER XXVII.

OF ACTIONS AGAINST JUSTICES.

When liable
to an action.

WHILST the Legislature has conferred upon justices powers of a most extensive character, it has nevertheless carefully protected the subject against their unlawful or wanton exercise; and, notwithstanding a most wise and comprehensive discretion has been accorded to magistrates in those cases in which they have undoubted jurisdiction, a heavy responsibility is imposed upon them where either wilfully or negligently they transgress the bounds of their authority. To have conferred upon these functionaries powers unchecked by the fear of consequences serious to themselves, would have been to have introduced a judicial despotism as extensive, as it would have been oppressive; and instead of an administration of the law remarkable both for its integrity and popularity, a system would have sprung up odious in its nature, and most mischievous in its consequences.

The checks placed upon the exercise of unlawful powers by justices need, however, never alarm the magistrate who desires fairly and impartially, and to the best of his discretion, to fulfil the various duties of his office, since, multitudinous as are the duties, in the performance of almost any of which he may draw down responsibility upon himself, the right and lawful course is so obvious, that wilful blindness or an utter recklessness of consequences can alone lead him into responsible error.

The general rule of magisterial responsibility is this: if a justice in or out of sessions has jurisdiction over the subject-matter laid before him, and acts judicially, he is not liable to an action for any act done within it, however erroneous the

conclusion at which he arrives may be. But in cases in which either he has not jurisdiction, or exceeds it, he will be liable in an action for damages to the party aggrieved. So well established is the first proposition, that in an action against a justice for trespass, either for false imprisonment or seizing the plaintiff's goods by virtue of a conviction, if at the time of the trial a conviction is produced valid upon its face, it is conclusive evidence of the facts therein stated, and no proof in denial is permitted to be adduced: (*Brittain v. Kinnaird*, 1 Brod. & Bing. 432; *Cave v. Mountain*, 1 Man. & Gr. 257; *Reg. v. Bolton*, 1 Q. B. 66.)

When liable
to an action.

The liability of justices, however, in cases where they either have no jurisdiction or exceed it, must not be taken in its limited sense, but must be understood to include not only those cases where there has been an absence of jurisdiction in fact over the case, but also where some statutable or formal requisite has been omitted, if such requisite be in any way an essential ingredient: (*Lindsay v. Leigh*, 17 L. J. 50, M. C.; 3 New Sess. Cas. 99; *re Tordoft*, 5 Q. B. 933; *Attwood v. Joliffe*, 3 New Sess. Cas. 116.)

Before the passing of the 11 & 12 Vict. c. 44, which we shall presently have more particularly to consider, it was immaterial that there was no irregularity in fact; if an irregularity was shown upon the face of the conviction, such conviction, unless quashed, being conclusive evidence for either party.

By the above-mentioned act, however, additional security is provided for justices in cases where, though their proceedings have been irregular, they had jurisdiction to adjudicate upon the case; and as that statute is the one which now regulates the law of actions against justices, and as the subject is one of great moment

to every magistrate, we propose considering it somewhat in detail.

The statute 11 & 12 Vict. c. 44, intituled *An Act to protect Justices of the Peace from Vexatious Actions for Acts done by them in the Execution of their Office*, after reciting that it is expedient to protect justices of the peace in the execution of their duty, enacts—

That every action hereafter to be brought against any justice of the peace for any act done by him in the execution of his duty as such justice, with respect to any matter within his jurisdiction as such justice, shall be an action on the case as for a tort; and in the declaration it shall be expressly alleged that such act was done maliciously and without reasonable and probable cause; and if, at the trial of any such action upon the general issue being pleaded, the plaintiff shall fail to prove such allegation, he shall be nonsuited, or a verdict shall be given for the defendant: (sect. 1.)

Actions.

It must here be observed that, at common law, if a conviction of justices were quashed, they would have been liable for anything done under it, equally as though no conviction had ever existed. To avoid, however, this injustice in cases where the justices had jurisdiction, but where, upon appeal or otherwise, their conviction was annulled, the 43 Geo. 3, c. 141 was passed, whereby by sect. 1 it was enacted, that in all actions brought against any justice of the peace on account of any conviction under any act of Parliament, &c., in case such conviction shall have been quashed, the plaintiff, besides the value and amount of the penalty which may have been levied, shall not be entitled to recover any more or greater damages than the sum of *two pence*, nor any costs of suit whatsoever, unless it shall be expressly alleged in the declaration, which shall be *in case* that such acts were done maliciously, and without any reasonable or probable cause. The 2nd section provided that the plaintiff should not be entitled to recover any penalty, or damages, or costs, in case the

justice should prove that the plaintiff was guilty of the offence of which he had been convicted, or on account of which he had been apprehended, and had undergone no greater punishment than was assigned by law to such offence. Actions.

This enactment, as it will be seen, applied only to those cases in which the conviction had been quashed, and as there was no rule of law rendering it necessary that a conviction should be quashed before action was brought, those convictions alone were so dealt with, which, if not quashed, would, upon production in court, have been an answer to the action, namely, such as were good upon their face, and the statute, therefore, had no application to cases in which the conviction was not quashed, which were those wherein, from some defect, the conviction could not be produced in evidence. This was a distinction wholly devoid of principle, hence the 11 & 12 Vict. c. 44, s. 1, has given the justices the same protection, regardless of whether the conviction has been quashed or not.

Before considering the construction that has been put upon this section, it will be well to draw attention to sect. 2, which reserves the rights of a plaintiff in cases where the justice has really acted without jurisdiction, or has exceeded it. That section enacts—

That for any act done by a justice of the peace in a matter of which by law he has not jurisdiction, or in which he shall have exceeded his jurisdiction, any person injured thereby or by any act done under any conviction or order made, or warrant issued by such justice in any such matter, may maintain an action against such justice in the same form and in the same case as he might have done before the passing of this act, without making any allegation in his declaration that the act complained of was done maliciously and without reasonable and probable cause : provided, nevertheless, that no such action shall be brought for anything done under such conviction or order until after such conviction shall have been quashed, either upon appeal or upon application to Her Majesty's Court of

Actions.

Queen's Bench; nor shall any such action be brought for anything done under any such warrant which shall have been issued by such justice to procure the appearance of such party, and which shall have been followed by a conviction or order in the same matter, until after such conviction or order shall have been so quashed as aforesaid; or if such last-mentioned warrant shall not have been followed by any such conviction or order, or if it be a warrant upon an information for an alleged indictable offence; nevertheless, if a summons were issued previously to such warrant, and such summons were served upon such person, either personally or by leaving the same for him with some person at his last or most usual place of abode, and he did not appear according to the exigency of such summons, in such case no such action shall be maintained against such justice for anything done under such warrant.

The two clauses thus set out show what is to be the remedy of a party complaining of a wrong inflicted upon him by an improper exercise of authority by a justice. The first section operates almost as a complete bar to an action against a justice in the cases therein mentioned, namely, where it is brought against him *for any act done by him in the execution of his duty as such justice, with respect to any matter within his jurisdiction as such justice*, since, in such a case, it will be necessary to allege and prove that the act complained of was done maliciously, and without reasonable or probable cause. It will, therefore, be under the second section that a complaining party will have any chance of success in an action against a justice.

In deciding whether or not the act complained of will come under the operation of the first or second section, much difficulty will occasionally arise, a difficulty which the Courts at Westminster, from the very loose language of the sections, have fully acknowledged. The embarrassment arises from the difficulty of defining the precise operation of the words, *any act done by him in the execution of his duty as such justice, with respect to any matter*

within his jurisdiction. In construing these words the judges have, in the few cases which have as yet come under their consideration, given them a very liberal interpretation, and as this subject is one of vital interest to magistrates, we give, as succinctly as possible, the various decisions which have been pronounced upon it. Actions
against
justices.

The case of *Leary v. Pattrick and another* (19 L. J. 211, M. C.; 4 New Sess. Cas. 258; 4 New Mag. Cas. 9) was one where the plaintiff had been convicted by the two defendants, who were justices, under the 6 & 7 Vict. c. 68, for illegally performing stage plays, and the conviction, which had been quashed upon appeal, did not contain any adjudication of costs, although the act empowered the justices to give costs, but the warrant of distress recited the conviction as adjudicating costs as well as the penalty. After the adjudication, and before the issuing of the distress warrant, the plaintiff was, by a verbal order of the defendants, detained in custody for the purpose of enforcing payment of the penalty, and the penalty and costs were subsequently levied by distress. An action having been brought in *trespass* against the two justices, and the question (amongst others) having been reserved for the court above, whether or not the action should have been *in case* (under the 1st section), and not *trespass*, the Court of Queen's Bench held that the action was well brought under the second section. Lord Campbell says :

"The next question is, whether trespass or case was the right form of action, and assuming the 1st section of the 11 & 12 Vict. c. 44, to be retrospective, this will depend upon the construction to be put upon that act. Now the 2nd section of the act leaves the law, in cases where the justices had no jurisdiction, or have exceeded their jurisdiction, and the convictions have been quashed, just where it was before the statute passed. In this case the conviction has been quashed, and the justices, although they originally had jurisdiction, exceeded it. They

Actions
against
justices.

made no adjudication of costs in their conviction, and yet in their warrant they recite that costs had been adjudicated, and require a levy of such costs. This made the warrant illegal, and the imprisonment and seizure under it were consequently illegal also, and the justices were, I think, liable to an action of trespass just as if the statute had not passed."

The next case is that of *Barton v. Bricknell* (20 L. J. 1, M. C.; 4 New Sess. Cas. 651; 3 New Mag. Cas. 6.) This was an action of *trespass* against the defendant, who was a justice of Oxfordshire, for breaking and entering the plaintiff's dwelling-house, and seizing his goods, and retaining possession of them until the plaintiff was compelled to pay 1*l.* 14*s.*, to regain possession, &c. It appeared that the defendant had convicted the plaintiff under the 29 Car. 2, c. 7, for unlawful trading upon a Sunday. The conviction adjudged that the plaintiff should pay a penalty of 5*s.*, together with 1*l.* 1*s.*, the costs of the prosecutor, and if the said several sums were not paid forthwith, the same should be levied by distress and sale of the goods of the plaintiff, and in default of sufficient distress, it adjudged the plaintiff to be set in the stocks for two hours, unless the said several sums, and *all costs and charges of the said distress*, should be sooner paid. This conviction had been brought up by *certiorari*, and quashed by the Queen's Bench on the ground that the award of the punishment of the stocks was unauthorized as to the costs, though it was warranted as to the penalty: (see this case, reported, 18 L. J. 56, M. C.; 3 New Sess. Cas. 470; 3 New Mag. Cas. 101.) The defendant had issued a warrant of distress founded upon this conviction, under which the plaintiff's goods were seized, to regain which he had paid 1*l.* 14*s.*, being the amount of the penalty and the costs of the conviction and of the distress, the action being brought in respect of this seizure. The

plaintiff never was, in fact, put into the stocks. At the trial, it was objected that the action should have been under sect. 1 of the 11 & 12 Vict. c. 44. The jury found, upon evidence adduced, that the plaintiff was actually guilty of the offence, and that he was liable by law to pay the sum levied under the distress, and they returned a verdict for the plaintiff, subject to the opinion of the court above. A motion having accordingly been made to enter a nonsuit, the question was very fully argued, and in opposition to the rule, the case of *Leary v. Patrick* was cited, which the court at once distinguished from the present from its being clearly one in which there was a manifest excess of jurisdiction. The court, consisting of Coleridge, Wightman, and Erle, JJ. (Lord Campbell being absent), held that the action was wrongly brought on the 2nd section, and made the rule absolute for a nonsuit. Mr. Justice Coleridge observed :

Actions
against
justices.

"I quite agree that this is a very important case, and that the statute 11 & 12 Vict. c. 44, is not very clearly worded. For both these reasons it is prudent for us to decide no more than is absolutely necessary to dispose of this rule. Therefore I confine what I have to say to the construction to be given to the first and second sections of the act. I think this case falls directly within sect. 1. The defendant had an information laid before him, which, on the face of it, was in a matter clearly within his jurisdiction; he heard the case and awarded a penalty and costs, with a power of levying them by distress. So far he acted quite rightly, but he went and added an alternative that the party convicted should be put in the stocks for the costs. In this point it is conceded on all hands that he exceeded his jurisdiction. Then, instead of actually putting the plaintiff in the stocks, the amount of the penalty and costs is levied by distress. Afterwards the conviction is quashed here, because of the excess of jurisdiction. It cannot be doubted that up to the award of the stocks all the proceedings were right, and this action is brought not for putting the plaintiff in the stocks, but for seizing his goods under a warrant of distress for the penalty and costs. Section 1 says, that any action brought against a justice for any act done by him in the execution of his duty as such justice, with respect to

Actions
against
justices.

any matter within his jurisdiction as such justice, shall be an action on the case, and contain an allegation of malice and want of reasonable and probable cause. It is impossible to find words more exactly representing the present cause of action than those, and, according to their literal meaning, if they stood alone without section 2. the plaintiff, having brought an action of trespass, must have been nonsuited. We must then see whether it is within the spirit of the act to give this full effect to the words of section 1. The act is passed to protect justices in the execution of their duty, and that section must contemplate some informality in the proceedings, otherwise no protection would be required. Section 2, which is relied on by the plaintiff, speaks of acts done by a justice in a matter of which he has not jurisdiction, or in which he shall have exceeded his jurisdiction. Now I am not prepared to deny that this case may range itself within the literal meaning of these words ; for this action is certainly brought for an act done by a justice in a matter in the course of dealing with which he has exceeded his jurisdiction ; but the following words are, that 'any person injured thereby, or by any act done under any conviction or warrant issued in such matter,' may maintain an action in the same form and case as he might have done before the act passed. If we give these words their literal meaning, it would be impossible to reconcile them with section 1 ; and the general rule in construing a statute is, if possible, to reconcile all its parts, and give full effect and meaning to the whole. That may be done here by supposing section 2 to apply to cases where the party brings his action for the thing which is itself the excess of jurisdiction. If this action had been for putting the plaintiff into the stocks, it is extremely probable that *trespass* would have lain. But, as that was not done, we may, I think, leave section 2 out of the question, and hold that the defendant is protected by section 1."

The judgments, also, of Mr. Justice Wightman and Mr. Justice Erle are well deserving of attention ; a portion of the latter, from its apt conciseness, we beg here to give. His lordship says :

"If anything had been done upon that wrongful order as to the stocks, I think it would have been a matter not within the jurisdiction of the defendant as a justice. The present is one of those cases where a few words perfectly immaterial to the plaintiff have crept into the conviction, by reason of which he has been enabled to get it quashed, and to bring an action in respect of all that has been done under it. I think it is precisely the case intended to be provided for by section 1, and where malice and want of probable cause is essential to give a

right of action. The only difficulty which arises is under section 2. But it seems to me necessary to hold that a limitation must be put upon that section. We must construe both clauses together, and prevent them from conflicting. In any case where the cause of action arises out of, or is proximately connected with, an excess of jurisdiction, an action of *trespass* would be proper. The present case affords an example of this. If the action had been for putting the plaintiff in the stocks, trespass might have been brought for that cause of action." Actions
against
justices.

There is one other case upon this important subject to which we think it right to draw especial attention; it is that of *Ratt v. Parkinson and another* (20 L. J. 208, M. C.; 3 New Mag. Cas. 66.) In this case the plaintiff, having been rated to a church rate, and refused to pay, a complaint was made before justices, and duly heard, and on the 6th of May a verbal order was made for payment by the plaintiff of the amount of the rate and costs. This order was not formally drawn up till some days afterwards. On the 7th a minute of the order was served upon the plaintiff, who refused to pay. After such refusal the order was formally drawn up, dated the 6th of May, and a warrant issued by the defendants, dated the same day, which was not executed until October, when a cart of the plaintiff's was seized for the distress. It did not appear whether the warrant was drawn up before or after the order dated the 6th of May, nor did it recite the order. An action of trespass having been brought for the seizure, the judge, at the trial, thinking that the defendants were under the protection of section 1 of the 11 & 12 Vict. c. 44, nonsuited the plaintiff, giving him leave, however, to move to enter a verdict for 8*l.*, which was found to be the value of the cart seized. Upon the question coming on for argument in the Common Pleas, the judges held the nonsuit to be right. The judgment of Jervis, C. J., which sets the matter in a very clear light, is as follows:—

Actions
against
justices.

"I am of opinion that this rule ought to be discharged. Without critically examining the warrant, I think we may assume that it would not bear a very close examination; that it may be defective in form in some respects. If so, I think that the case falls expressly within the provisions of 11 & 12 Vict. c. 44, s. 1, provided the defendants were acting in other respects within their jurisdiction. It is unnecessary to put a construction upon sect. 2, because, although the warrant is irregular in respect of certain formal objections, all the other proceedings are, in substance, regular. A rate is duly made, and not paid by the plaintiff, from whom it is due. He is duly convened before the justices, the matter is discussed on the 1st of April, and the final determination adjourned at his request. On the 6th of May, the magistrates pronounce an order that he shall pay the rate. Here the irregularity is said to have commenced; it is said that this order is no order on which a warrant could be founded until it is drawn up under hand and seal of the justices who made it; and that the warrant in this case, being dated the 6th of May, when no order had, in fact, been drawn up, was an excess of jurisdiction. I am, however, of opinion, that on the true construction of sections 14 and 17 of the 11 & 12 Vict. c. 43, the order may be made by parol, and a minute of that order be drawn up, and a copy served, and that a formal order being afterwards drawn up and bearing date as of the day when the parol order is made, is the order of that day, and one which would justify a warrant alleging that the sum in fact ordered to be paid had been duly demanded and refused, although the order may not have been formally drawn up at the time the warrant issued. The act 11 & 12 Vict. c. 43, s. 14, seems clear. If a magistrate convicts or makes an order a minute shall be made, 'and the conviction or order shall *afterwards* be drawn up in proper form,' under his hand and seal. That shows that it cannot be necessary to draw up a formal order at the time when the order is in one sense *made*. Then the order subsequently drawn up in proper form relates back to the date of the making of the order. Section 17 goes on to say that 'the defendant shall be served with a copy of the minute of such order before any warrant of distress shall issue in that behalf.' That has here been done. I think, therefore, that the defendants have been strictly regular in the course that has been taken, although the form of the warrant may be wrong. If necessary, the court might, perhaps, draw a distinction between sections 1 and 2 of the 11 & 12 Vict. c. 44. But it is not necessary. Were it so, I confess I should be inclined to think that 'exceeding his jurisdiction' in section 2, means, assuming to do something which the act under which he is proceeding could by no possibility justify, as in the case in the Queen's Bench of *Leary v. Patrick*, where there could have been no authority to issue a distress for costs not adjudged by a conviction, or as

was the case in *Barton v. Bricknell*, in which case there was no power to order the plaintiff to be put in the stocks. But I abstain from pronouncing any opinion upon this point." Actions
against
Justices.

The foregoing cases point out, with tolerable clearness, the instances in which the two first sections of the 11 & 12 Vict. c. 44, are severally applicable. It need only now be added, that by section 3 of this act it is enacted, that where a conviction or order shall be made by one or more justice or justices, and a warrant of distress or commitment shall be granted thereon by another, *bonâ fide*, and without collusion, no action shall be brought against the latter by reason of any defect in such conviction or order, or for want of jurisdiction in the former, but that the action shall be brought against the justice or justices who made such conviction or order; and that by section 4 it is enacted, that where any *poor rate* shall be made, allowed and published, and a warrant of distress shall be issued against any person named and rated therein, no action shall be brought against the justice or justices who shall have granted such warrant by reason of any irregularity or defect in such rate, or by reason of such person not being liable to be rated therein; and that, in all cases where a discretionary power is given to a justice, no action shall be brought against him for or by reason of the manner in which he shall have exercised his discretion in the execution of any such power.

To protect justices as far as possible from vexatious actions, the Legislature has wisely provided certain limitations and conditions within and under which alone they can be brought. Thus by sect. 8 of the 11 & 12 Vict. c. 44, it is enacted—

That no action shall be brought against any justice of the peace for anything done by him in the execution of his office, unless the same be commenced within six calendar months next after the act complained of shall have been committed. Limitation
of action.

Also, that the justices may have full means of knowing of what the complaint against them really consists, to the end that if in error they may the more readily and satisfactorily make amends, it is by the 9th section enacted—

**Notice of
action.**

That no action shall be commenced against any justice of the peace until one calendar month, at least, after a notice in writing of such intended action shall have been delivered to him, or left for him at his usual place of abode, by the party intending to commence such action, or by his attorney or agent, in which said notice the cause of action and the court in which the same is intended to be brought, shall be clearly and explicitly stated, and upon the back thereof shall be indorsed the name and place of abode of the party so intending to sue, and also the name and place of abode or of business of the said attorney or agent, if such notice have been served by such attorney or agent.

**Plea and
evidence.**

The 10th section provides for the justice being sued only in the county where the act complained of was committed, and enables him to plead the general issue and give any special matter of defence in evidence under it. It also gives him a right to decline being sued in the County Court.

Tender.

The 11th section then contains very ample provisions for tendering amends by the justice, and paying money into court, and provides also for the course of proceedings upon the action where money has been tendered and paid into court, which it is unnecessary more particularly to refer to in this place.

Nonsuit.

Section 12 provides for the plaintiff being nonsuited in the event of his failing at the trial to show that he has complied with the foregoing conditions.

Damages.

The 13th section enacts—

That in all cases where the plaintiff in any such action shall be entitled to recover, and he shall prove the levying or payment of any penalty or sum of money under any conviction or order as parcel of the damages he seeks to recover, or if he prove that he was imprisoned under such conviction or order,

and shall seek to recover damages for any such imprisonment, he shall not be entitled to recover the amount of such penalty or sum so levied or paid, or any sum beyond the sum of twopence, as damages for such imprisonment, or any costs of suit whatever, if it shall be proved that he was actually guilty of the offence of which he was so convicted, or that he was liable by law to pay the sum he was so ordered to pay, and (with respect to such imprisonment) that he had undergone no greater punishment than that assigned by law for the offence of which he was so convicted, or for nonpayment of the sum he was so ordered to pay.

The 14th section enacts, that in certain events Costs.
the plaintiff, if he succeed, shall have his costs as between attorney and client; and that the defendant, in every case in which an action shall be brought against him for anything done by him in the execution of his office, shall, if he obtain judgment, have his costs in like manner as between attorney and client.

CHAPTER XXVIII.

CRIMINAL INFORMATION.

WE now proceed to consider in what way and when, justices may be made to answer criminally for their conduct in office.

There are two descriptions of criminal proceeding which may be put in force against justices, namely, indictment, and criminal information. The former of these is entirely disused, and has given place to the more satisfactory and efficient process of a criminal information, which latter alone we shall now discuss.

The offence of a justice acting in his office with a partial, malicious, or corrupt motive, is certainly one of grave importance, and when

Criminal
informations.

brought under the cognizance of the Court of Queen's Bench, never fails of being followed by strong and effective animadversion, the peculiar means of correction being that of a criminal information.

Whilst every reasonable latitude is given to justices in the exercise of their discretion in their office, and whilst the law will never hold them criminally responsible for any conduct, however unwise, which merely proceeds from an error of judgment, yet, if in any case they act from undue, corrupt, vindictive, or partial motives, they at once become amenable to criminal proceedings, and the Court of Queen's Bench will lend its ready aid to check and correct proceedings which, if allowed to go uncensured, would reflect the deepest disgrace upon the administration of the law.

To the honour of the magistracy of this country the occasions for such checks are exceedingly rare, our legal annals presenting comparatively few instances in which the administration of justice has needed the assistance of the criminal law for its correction or censure.

The principle upon which a criminal information is either granted or refused will be best illustrated by the *dicta* of different judges upon applications for this species of process.

In *R. v. Cozens* (2 Doug. 426), we find Lord Mansfield thus observing:—"No justice of the peace ought to suffer for ignorance where the heart is right; on the other hand, where magistrates act from undue, corrupt, or indirect motives, they are always punished by this court." So, too, the same learned judge remarks in *R. v. Young and Pitts* (1 Burr. 556), which was a motion for a criminal information against justices for arbitrarily, obstinately, and unreasonably refusing to grant an alehouse licence—"That this court has no power or claim to review the

reasons of justices of the peace upon which they form their judgments in granting licences, by way of appeal from their judgments or overruling the discretion intrusted to them. But if it clearly appears that the justices have been partially, maliciously, or corruptly influenced in the exercise of this discretion, and have consequently abused the trust reposed in them, they are liable to prosecution by indictment or information, or even possibly by action, if the malice be very gross and injurious. If their judgment be wrong, yet their heart and intention pure, God forbid that they should be punished.”

In *R. v. Borron* (3 B. & Ald. 434), we find Abbott, C. J., thus expressing himself upon an application of this nature:—“They are, indeed” (the justices), “like any other subject of this kingdom, answerable to the law for the faithful and upright discharge of their trust and duties. But whenever they have been challenged upon this head, either by way of indictment or application to this court for a criminal information, the question has always been not whether the act done might, upon full and mature investigation, be found strictly right, but from what motive it had proceeded, whether from a dishonest, oppressive, or corrupt motive, under which description fear and favour may generally be included, or from mistake or error. In the former case alone they have become the objects of punishment. To punish as a criminal any person who, in the gratuitous exercise of a public trust, may have fallen into error or mistake, belongs only to the despotic ruler of an enslaved people, and is wholly abhorrent from the jurisprudence of this kingdom.” See also *R. v. Cox* (2 Burr. 785); *R. v. Palmer* (2 Burr. 1162); *R. v. Jackson* (1 T. R. 653); *R. v. Athay* (2 Burr. 653); *R. v. Williams* (3 Burr. 1317.) The case also of *Reg. v. Badger* (4 Q. B. 468),

Criminal
informations.

is replete with valuable observations upon this subject.

The motion for a rule *nisi* to file a criminal information should always be made promptly, and before it is made the prosecutor should give the justice six days' notice of his intention to move, and of the grounds of his motion.

As the practical proceedings to obtain leave to file a criminal information, and the various subsequent steps to be taken in the progress of the prosecution are in no way peculiar to justices alone, but are applicable to all classes of persons against whom such a process may be enforced, it is unnecessary to pursue the subject into further stages.

MONTHLY LIST

or

BUSINESS TO BE DONE BY JUSTICES.

Quarter Sessions.

By the 1 Will. 4, c. 70, it is enacted, that the Justices of the Peace in every county, riding, or division, shall hold their General Quarter Sessions of the Peace as follows :—

In the first week after the 11th of October.

In the first week after the 28th of December.

In the first week after the 31st of March.

In the first week after the 24th of June.

By the 4 & 5 Will. 4, c. 47, provision is made for holding the spring sessions at a different time if the assizes will otherwise interfere with them (see *ante*, p. 144.)

FEBRUARY.

Alehouses—Billiard rooms—Licensing.—By the 9 Geo. 4, c. 61, s. 1, the justices in every division, &c., in Middlesex and Surrey, are to hold a special sessions, to be called “The General Annual Licensing Meeting,” for the purpose of granting licences to persons keeping inns, alehouses, and victualling houses to sell exciseable liquors by retail to be drunk or consumed on the premises, and that such meeting is to be holden within the first ten days of the month of March; and, by sect. 2, the justices of every such division are to hold, twenty-one days at least before such general licensing day, a petty session, when they are, by precept under their hands, to appoint the day, hour, and place, upon and in which such General Licensing Meeting shall be holden.

By the 8 & 9 Vict. c. 109, s. 10, the justices of the division

at such General Licensing Meeting are empowered to grant Billiard Licences.

Constables.—By the 5 & 6 Vict. c. 109, s. 2, the justices in each division are, *within the first seven days* of this month in each year, to issue a precept under the hands of two of them to the overseers of each parish within the division, requiring them to make out and return, before the 24th of March, a list, in writing, of a competent number of men within their respective parishes qualified and liable to serve as constables, and also to perform all other requisitions in the said precepts contained, and with the said precept, notice is to be given to the said overseers of the time and place where such special session of the peace will be holden, which, by section 1, must be on some day after the 24th of March, and before the 9th day of April.

MARCH.

Alehouses—Billiard rooms.—By the 9 Geo. 4, c. 61, the General Annual Licensing Meeting is, in Middlesex and Surrey, to be held within the first ten days of the month of March; and by the 8 & 9 Vict. c. 109, the keepers of billiard tables are to be licensed at the same time.

Constables.—By the 5 & 6 Vict. c. 109, s. 1, the justices of every division, &c., are, on some day within the 24th of March and before the 9th of April, to hold a special petty session for the appointment of parochial constables. (See FEBRUARY.)

Highways.—By the 5 & 6 Will. 4, c. 50, s. 6, surveyors of the highways are to be elected annually on the 25th of March, and by sect. 44, within one calendar month after such election, the preceding surveyor is to submit his accounts, signed by him, to the justices in special sessions, who are to examine him as to the truth of the said accounts.

By sect. 45, the surveyor is to verify his accounts, and make the returns required by the act, to a special sessions to be held next after the 25th of this month.

By sect. 45 of the above act, the justices within their respective divisions are required to hold not less than eight, nor more than twelve, special sessions in every year for executing the purposes of the act, the days of holding which are to be appointed at a special sessions to be held within fourteen days after the 20th day of March in every year.

Overseers of the poor.—Overseers of the poor are, by the 43 Eliz. c. 2, s. 1, and the 54 Geo. 3, c. 91, s. 1, to be appointed on the 25th of March, or within fourteen days afterwards, under the hands and seals of two or more justices.

And in districts where there are no auditors appointed under the 7 & 8 Vict. c. 101, the outgoing overseers are, within fourteen days after the appointment of the new overseers, to submit their accounts to the justices in special sessions to be holden within such fourteen days.

JULY.

Game.—By the 1 & 2 Will. 4, c. 32, s. 18, the justices in each division are, in this month, to hold a special session in the division for which they usually act, for the purpose of granting licences to deal in game.

By the 2 & 3 Vict. c. 35, s. 4, the justices are empowered to hold such special sessions at other times of the year in addition to that in the month of July.

AUGUST.

Alehouses—Billiard tables.—By the 9 Geo. 4, c. 6, s. 1, the justices of each division of every county (except in Middlesex and Surrey) are to hold annually, on some day between the 20th day of August and the 14th day of September, a special session for the purpose of granting alehouse licences; and by the 8 & 9 Vict. c. 109, s. 10, they are at the same special sessions to grant licences for the keeping of billiard tables.

By sect. 4 of the 9 Geo. 4, c. 61, the justices, at their general licensing meeting, are to appoint not less than four, nor more than eight, special sessions to be held in the division in the year next ensuing, for the transfer of licences.

SEPTEMBER.

Jurors.—By the 6 Geo. 4, c. 50, s. 9, the lists of jurors are to be affixed on or near the doors of all the churches and chapels, &c. in every parish, on the first Sunday in this month, and on the two following Sundays.

And by sect. 10, the justices within every division are, within the last seven days, on the day and at the hour appointed, to hold a special sessions for receiving and examining the jury lists, when and where the churchwardens

and overseers for each parish are required to attend, and the lists, when approved, are to be delivered to the high constable of each division.

N.B.—Independently of the above matters, which are required by statute to be transacted at particular stated periods, there are others, the time for transacting which is not pointed out by the statute, such as appeals against rates under the 6 & 7 Will. 4, c. 96, which, by sect. 6, enacts, that the justices of every petty sessional division shall, four times at least in every year, hold a special sessions for hearing appeals against the rates of the several parishes within their respective divisions, &c.

It will also be remembered that justices may and should meet in petty sessions for the transaction of ordinary business as often as convenience requires.

CRIMINAL JURISDICTION OF THE QUARTER SESSIONS.

THE Quarter Sessions have a general jurisdiction to try all indictable crimes and misdemeanors not specially excepted by legislative enactment.

By the 5 & 6 Vict. c. 38, intituled, *An Act to define the Jurisdiction of Justices in General and Quarter Sessions of the Peace*, it is recited, that it is expedient that the powers of justices in General and Quarter Sessions, with respect to the trial of officers, be better defined, and it is therefore enacted, that after the passing of the act, neither the justices of the peace acting in and for any county, riding, division, or liberty, nor the recorder of any borough, shall at any session of the peace, or at any adjournment thereof, try any person or persons for any

Treason, Murder, or Capital Felony ; or for any

Felony which, when committed by a person not previously convicted of felony, is punishable by transportation beyond the seas for life, or for any of the following offences (that is to say),

1. Misprision of treason.
2. Offences against the Queen's title, prerogative, person, or Government, or against either House of Parliament.

3. Offences subject to the penalties of *præmunire*.
4. Blasphemy and offences against religion.
5. Administering or taking unlawful oaths.
6. Perjury.
7. Making or suborning any other person to take a false oath, affirmation, or declaration punishable as perjury, or as a misdemeanor.
8. Forgery.
9. Unlawfully and maliciously setting fire to crops of corn, grain, or pulse, or to any part of a wood, coppice, or plantation of trees, or to any heath, gorse, furze, or fern.
10. Bigamy and offences against the laws of marriage.
11. Abduction of women and girls.
12. Endeavouring to conceal the birth of a child.
13. Offences against any provision of the laws relating to bankrupts and insolvents.
14. Composing, printing, or publishing blasphemous, seditious, or defamatory libels.
15. Bribery.
16. Unlawful combinations and conspiracies, except conspiracies or combinations to commit any offence which such justices or recorder respectively have or has jurisdiction to try when committed by one person.
17. Stealing, or fraudulently taking, or injuring, or destroying, records or documents belonging to any court of law or equity, or relating to any proceeding therein.
18. Stealing, or fraudulently destroying or concealing, wills or testamentary papers, or any document or written instrument, being or containing evidence of the title to any real estate, or any interest in lands, tenements, or hereditaments.

Subject to the foregoing exceptions, the Quarter Sessions have a general jurisdiction to try all indictable offences.

ABSTRACT

OF

*Return to an Address of the Honourable the House of
Commons, Dated 26th May, 1851, for—*

“RETURNS of the Number of JUSTICES in the COMMISSION of the PEACE in each County and Town of a County in England and Wales; of the Number of such Justices who have Qualified; of the Total Number of Justices in the Commission of the Peace for Counties in England and Wales; of the Total Number who have Qualified; of the Number of Borough Magistrates in England and Wales, including Mayors and Aldermen, and Justices *ex officio*; of the Number of Stipendiary or Paid Magistrates in England and Wales.”

“SIMILAR RETURNS for Ireland.”

“AND, RETURN of the Number of Magistrates, Sheriffs, and Procurators Fiscal, or Persons exercising Magisterial Functions in Scotland, distinguishing the Number Paid and Unpaid.”

*Ordered, by the House of Commons, to be Printed,
7th August, 1851.*

[1.—RETURN

1.—RETURN of the Number of JUSTICES in the Commission of the Peace in each County of England and Wales, and the Number of such Justices who have Qualified;—also, Similar Return for Ireland.

ENGLAND AND WALES.

COUNTIES.	Number of Justices in the Commission of the Peace.	Number of such Justices who have Qualified.
ENGLAND :		
Bedford	264(a)	68
Berks	407	167
Bucks	422(a)	188
Cambridge	267(a)	56
Isle of Ely	70	37
Chester	545	166(c)
Cornwall	559(a)	128
Cumberland	378(a)	123
Derby	205	118
Devon	288	269
Dorset	449	114(c)
Poole, County of the Town of	13	12
Durham	210	152
Essex	671	247
Gloucester	531	252
Bristol, City and County	25	20
Hereford	246(b)	145
Herts	523	205
St. Alban's, Liberty of	177	66
Huntingdon	286(a)	41
Kent	528	252
Lancaster	715(a)	450
Leicester	354(a)	75
Lincoln :		
Kesteven	284	53
Lindsey	544	105(c)
Holland	157	23

(a) Inclusive of Peers, Privy Councillors, Judges, and Officers of State.

(b) Exclusive of Peers, Privy Councillors, &c., &c.

(c) The number now living.

ENGLAND AND WALES—*continued.*

COUNTIES.	Number of Justices in the Commission of the Peace.	Number of such Justices who have Qualified.
ENGLAND—<i>continued.</i>		
Middlesex	571	308
Monmouth	157	99
Norfolk	653(a)	249(c)
Northampton	670	88(c)
Peterborough, Liberty of	50	22
Northumberland	507(a)	105
Nottingham	371	80
Town and County	24	18
Oxford	161(b)	104
Rutland	289	24
Salop	424	133
Somerset	443	224
Southampton	320	224(c)
Town and County	19	19
Stafford	340(b)	205
Suffolk	492	240
Surrey	654(a)	215
Sussex	473(c)	245(c)
Warwick	251(b)	136
Westmorland	257	66
Wilts	451(a)	172
Worcester	583	258
York :		
West Riding	788	290
North Riding	455	146
East Riding	142	83
Ripon, Liberty of	79(c)	23(c)
TOTAL, ENGLAND	18,742	7,308

(a) Inclusive of Peers, Privy Councillors, Judges, and Officers of State.

(b) Exclusive of Peers, Privy Councillors, &c., &c.

(c) The number now living.

ENGLAND AND WALES—*continued.*

COUNTIES.	Number of Justices in the Commission of the Peace.	Number of such Justices who have Qualified.
WALES :		
Anglesey	71(c)	25(c)
Brecon	148	86
Cardigan	175	77
Carmarthen	197	97
Carnarvon	200	44(c)
Denbigh	171	96
Flint	137	58
Glamorgan	182	119
Merioneth	99(c)	32
Montgomery	148	53
Pembroke	282	94
Haverfordwest	50	16
Radnor	90	60
TOTAL, WALES	1,950	857
TOTAL, ENGLAND	18,742	7,308
TOTAL, WALES	1,950	857
GRAND TOTAL, ENGLAND AND WALES }	20,692	8,165

(c) The number now living.

IRELAND.

COUNTIES.	Number of Justices in the Commission of the Peace.	Number of such Justices who have Qualified.
Antrim	120	104
Armagh	76	65
Carlow	54	49
Cavan	78	65
Clare	121	100
Cork	352	294
Donegal	99	90
Down	164	151
Dublin	138	119
Fermanagh	76	70
Galway	179	139
Kerry	113	96
Kildare	77	66
Kilkenny	80	65
King's County	103	80
Leitrim	50	40
Limerick	167	156
Londonderry	91	82
Longford	47	41
Louth	49	42
Mayo	138	117
Meath	164	144
Monaghan	71	65
Queen's County	101	90
Roscommon	116	104
Sligo	87	73
Tipperary	231	202
Tyrone	119	97
Waterford	104	87
Westmeath	117	103
Wexford	128	122
Wicklow	85	70
TOTAL, IRELAND	3,695(d)	3,188(d)

(d) In addition, there are in each County Commission the names of all Privy Councillors and all Queen's Counsel in Ireland, but very few of these have qualified.

2.—RETURN of the Number of BOROUGH MAGISTRATES in England and Wales, including Mayors and Aldermen, and Justices *ex-officio*; also, Similar Return for Ireland.

Total number of Borough Magistrates, England and Wales 1,645

Total number of Borough Magistrates, Ireland . 169

3.—RETURN of the Number of STIPENDIARY or PAID MAGISTRATES in England and Wales; also, Similar Return for Ireland.

Number of Stipendiary Magistrates in England and Wales 28

Number of Stipendiary Magistrates in Ireland . 71

4.—RETURN of the Number of MAGISTRATES, SHERIFFS and PROCURATORS FISCAL, or Persons exercising Magisterial Functions in Scotland, distinguishing the Number Paid and Unpaid.

Justices of the Peace, all Unpaid.	Burgh Magistrates, all Unpaid.	TOTAL.	Sheriffs and Sheriff Substitutes.			Procurators Fiscal for Counties and Burghs, &c.		
			Paid.	Unpaid.	Total.	Paid.	Unpaid.	Total.
4,788	400	5,188	89	50	19	190	11	201

Note.—This Return includes procurators fiscal, because specially mentioned in the Order of the House of Commons; but it should be explained that procurators fiscal exercise no magisterial functions.



INDEX.

A.

ACCUSED:					PAGE
mode of bringing him before the justices	...	...	...	...	30
ACTIONS AGAINST JUSTICE:					
of actions against justices	...	...	...	...	187
when an action will lie	...	...	..	...	187
ADJOURNMENT:					
of case upon a summary hearing	...	...	...	...	83
when allowed	...	...	...	...	33, 38
ALEHOUSE:					
licence for	...	...	...	...	138
AMICABLE ARRANGEMENTS:					
when they may be made upon summary convictions	...	...	...	...	86
APPEAL:					
defendant to be informed of his right as to	...	...	...	...	95
duties of justices with reference to, at quarter sessions	...	...	...	...	169, 175
APPEARANCE OR NON-APPEARANCE:					
proceedings upon appearance or non-appearance of party charged with an indictable offence	...	...	...	...	33
proceedings upon	...	...	...	...	70
APPOINTMENT:					
of justices	...	...	...	...	4
ARRAIGNMENT:					
of prisoners at sessions	...	...	...	...	158
practice upon	...	...	...	...	158
ARTICLES OF THE PEACE:					
as to exhibiting	...	...	...	...	106, 109
ASSIZES:					
committal to, when proper	...	...	...	...	47
ATTORNEY:					
when parties entitled to have the assistance of...	22,	29	...	...	
appearance by, upon summary proceedings	...	...	...	...	72

	B.	PAGE
BAIL:		
admitting to	...	50
discretion as to	...	51, 53
sureties	...	54
remanding prisoner to obtain	...	55
when party already in custody	...	56
committing, with consent to take bail	...	56
one justice may bail	...	56
BILLIARD TABLES:		
licences for keeping	...	137
BINDING:		
of prosecutor and witnesses to prosecute and give evidence	...	57
BOROUGH JUSTICES:		
as to qualification of	...	3
C.		
CASE:		
reserving case for the court above	...	168
on appeals	...	171
CAUTION:		
to be given to prisoner by the justices '	...	40
CERTIFICATE:		
of expenses	...	62
of dismissal upon a summary hearing	...	95
CERTIORARI:		
of the writ of	...	181, 187
when it will issue	...	181
when to be moved for	...	183
notice of motion for	...	183
the application for the writ	...	183
when granted in the first instance	...	183
recognizance upon	...	184
showing cause, upon rule for	...	184
how writ returned	...	184
if issued irregularly	...	185
CHARGE TO THE GRAND JURY: see CHAIRMAN (THE)		
CHAIRMAN (THE):		
of sessions	...	149
duty in charging the grand jury	...	151
as to addressing the jury	...	161
his summing up on the trial of indictments	...	164

CHILDREN: <i>see</i> JUVENILE OFFENDERS.	PAGE
CLAIM OF RIGHT:	
duty of justices upon	83
CLERK OF THE PEACE:	
his functions, &c.	146, 148
CLERK TO JUSTICES:	
his appointment	10, 11
fees of	13
COMMITMENT:	
for contempt	58
of witness	58
for trial	58
COMMITTEES:	
their appointment and duties	153
their reports	154
their duration—vacancies	154
COMPROMISES:	
when they may take place upon summary convictions	86
CONSTABLES (PARISH):	
appointment of	131
CONSTABLES (SPECIAL): <i>see</i> SPECIAL CONSTABLES.	
CONTEMPT:	
commitment for	58
CONVEYANCE:	
of prisoner, costs of	58
CONVICTION: <i>see</i> the VARIOUS HEADS.	
amendment of	185
COSTS:	
of commitment to trial of prisoner	58
of preliminary investigation	62
upon summary conviction	95
of distress, excessive	123
upon appeals at quarter sessions	172, 174
COUNSEL:	
when parties entitled to have the assistance of	22, 29
appearance by, upon summary proceedings	72
address of, upon the trial of indictments	160
COURT:	
to be public, upon summary hearing	73
CRIMINAL INFORMATION:	
when it will and will not be granted against justices	201
CROSS-EXAMINATION:	
when and how to take place	37

	D.	PAGE
DECISION:		
of justices as to discharging or committing prisoner for trial		44
DEFENCE:		
prisoner's defence before justices, upon a charge of an indictable offence		39
DEFENDANT: see the VARIOUS HEADS applicable to this title.		
when entitled to a certificate of dismissal upon a summary hearing		95
DEMURRING:		
of prisoners at sessions		159
DEPOSITIONS;		
copy of, for the accused		61
reading over and signing		62
transmission of		62
DISMISSAL:		
certificate of, upon a summary hearing		95
DISTRESS:		
fraudulent		122
excessive costs		123
DIVISIONS:		
of counties, petty sessional		5,
examination of witnesses, the course to be pursued, as to		80
	E.	
EXAMINATIONS:		
mode of taking them		35
of examining the witnesses		35, 37
EXCLUDING THE PUBLIC:		
from the justices' room, upon the hearing of a charge of an indictable offence		23, 34
EX OFFICIO:		
when justices can act		148
EX PARTE:		
hearing a case		74
EXPENSES:		
certificate of		62
	F.	
FORMAL PROCEEDINGS:		
as to		96

INDEX.

221

	G.	PAGE
GAME LICENCES:		
granting same		138
GENERAL SESSIONS:		
nature of		143
GOOD BEHAVIOUR (SURETIES FOR):		
as to		104, 109
GRAND JURY:		
as to		150
charging same		151
number of		150
oath of		150

H.

HABEAS CORPUS (WRIT OF):		
of the writ of		186, 187
how obtained		186, 187
service of, and return		187
HEARING:		
of the case upon a summary conviction		75
course of proceeding		77
HIGHWAYS:		
duties of justices with reference to		109, 121
special sessions for		110
diverting highways		110
materials for		111
stopping up or diverting		111
compelling repair of		115
when duty to repair disputed... ..		115
applying highway rate to repair of		117
special sessions for passing surveyor's accounts		140

I.

IMMUNITY:		
of justices in cases within their jurisdiction		45
INDICTABLE OFFENCES:		
proceedings of justices in reference to charges of indictable offences		29
INDICTMENT:		
proceedings at sessions upon the trial of indictments		157, 169
IMPARTIALITY:		
necessity of, in justices		21

INFANTS: *see* JUVENILE OFFENDERS. PAGE

INTEREST:

justices interested	...	...	...	...	17,	19
of justices in granting alehouse licences	...	...	...	...	...	139

J.

JUDGMENT:

of justices upon summary convictions	...	...	92
--------------------------------------	-----	-----	----

JURISDICTION:

immunity of justices when acting within their jurisdiction	...	...	...	...	...	45
--	-----	-----	-----	-----	-----	----

JURY LISTS:

special sessions for settling	...	...	...	...	140
-------------------------------	-----	-----	-----	-----	-----

JUSTICE: *see* the VARIOUS HEADS referring to the subject.

JUSTICES' CLERK: *see* CLERK TO JUSTICES.

JUVENILE OFFENDERS:

proceedings against, under 10 & 11 Vict. c. 82, and 13 Vict. c. 37	...	...	...	...	98,	104
--	-----	-----	-----	-----	-----	-----

L.

LANDLORD AND TENANT:

duties of justices with reference to	...	...	...	118
giving possession of deserted premises	...	...	...	119
giving possession when tenancy expired	...	...	...	120
when goods fraudulently removed to avoid a distress...	...	...	...	122

LICENCES:

granting same	...	...	...	...	...	138
---------------	-----	-----	-----	-----	-----	-----

M.

MANDAMUS:

the writ of	...	...	...	...	175,	181
when it will issue to justices	...	...	...	...	...	175
when it will not issue...	...	...	...	...	...	176
when justices should decline to act, except under	...	...	...	...	...	178
proceedings to obtain writ	...	...	...	...	...	179
showing cause against	...	...	...	...	...	179
argument upon	...	...	...	...	...	180
substitution of a rule for the writ	...	...	...	...	...	180

MILITARY:

justices calling for the assistance of	...	...	...	133
--	-----	-----	-----	-----

MUTINY ACT:

duties of justices under	...	...	...	...	138
--------------------------	-----	-----	-----	-----	-----

INDEX.

223

MONEY:						PAGE
of prisoner						59

MOTIONS:						
at sessions by justices						156

O.

OATH:						
of witnesses, when to be administered						35
to be taken by justices						4

OFFENCES (INDICTABLE) *see* INDICTABLE OFFENCES.

OFFICERS OF THE COUNTY:						
their appointment						156

OPEN COURT:						
upon summary hearings						73

ORDERS:						
amendment of						184, 185

ORDERS OF SESSION: *see* RULES AND ORDERS OF SESSIONS.

P.

PEACE (PUBLIC) *see* PUBLIC PEACE.

PEACE (SURETIES TO KEEP THE):						
as to						106, 109

PENALTY:						
of awarding the penalty upon a summary conviction						94

PERJURY:						
directing prosecution for, upon summary hearing, &c.						97
power of quarter sessions to direct an indictment for						168

PETTY JURY:						
at sessions						158

PETTY SESSIONAL DIVISIONS:						
how formed						3

PETTY SESSIONS:						
place of meeting of justices						6
duties of justices at						17
what are						8

PLACE OF MEETING:						
of justices in petty or special sessions						6

PLEADING:						
of prisoners at sessions						158

POOR LAWS:						PAGE
duties of justices with reference to	123,	129				
POOR RATE:						
appeals against	128					
PRELIMINARY OBJECTIONS:						
how to be dealt with	75					
PRISONER:						
commitment of, for trial	58					
money of	59					
when entitled to a copy of the depositions	61					
right to cross-examine witnesses	162					
his defence	163					
calling his witnesses	163					
discharge of, upon a verdict of not guilty	165					
punishment of, on the trial of an indictment... ..	166					
transportation of	166,	167				
PROCEDENDO (WRIT OF):						
when it will issue	185					
PUBLIC:						
exclusion of, upon hearing of charges of indictable offences	23,	34				
have a right to be present upon summary hearings ...	73					
PUBLIC PEACE:						
duties of justices with reference to the preservation of	130,	135				
Q.						
QUALIFICATION:						
of justices	3					
QUARTER SESSIONS:						
duties of justices with reference to	142					
nature of	143					
when to be holden	143,	149				
in boroughs	144					
where holden	145					
duty of justices to be present at	145					
a court of record	148					
rules and orders of	148					
opening of the sessions	150					
as to dividing sessions	152					
business of the sessions upon the first day	153					
appeals at	169,	175				
R.						
RECOGNIZANCE:						
upon writ of <i>certiorari</i>	184					

REMAND:					PAGE
of prisoner to obtain bail	...	...	...	...	55
REPLY:					
for the prosecution on the trial of indictments	...				164
RIGHT (CLAIM OF):					
duty of justices upon	...	...	...	...	83
RIOT ACT:					
when to be read	...	...	...	...	134
form of proclamation...	...	...	...	...	135
ROADS:	<i>see</i>	HIGHWAYS.			
RULES AND ORDERS OF SESSIONS:					
as to generally	...	...	...	...	148
S.					
SEARCH WARRANT:					
when to be granted	...	...	...	...	136
SERVICE:					
of summons	...	...	...	...	69, 71
SESSIONS:	<i>see</i>	QUARTER SESSIONS.			
committal to, when proper	...	...	...	...	47
SPECIAL CONSTABLES:					
as to appointment, &c., of	...	...	...	...	131
SPECIAL SESSIONS:					
place of meeting of justices	...	...	...	...	6
what are	...	...	...	...	9
duties of justices at	...	...	...	...	17
SUMMARY CONVICTIONS:					
proceedings upon	...	...	...	...	68, 104
SUMMING UP:					
the summing up of the chairman at quarter sessions					164
SUMMONS:					
when to issue, on a charge of an indictable offence	...				30
upon a summary hearing	...	...	...	...	68, 69
service of	...	...	...	...	69
SURETIES:					
for prisoner on being bailed	...	...	...	...	54
number of	...	...	...	...	55
SURETIES OF THE PEACE AND GOOD BEHAVIOUR:					
as to taking	...	...	...	...	106 109
T.					
THEATRES:					
licences for keeping	...	...	...	...	139

TRANSPORTATION:		PAGE
punishment of, at quarter sessions	... ..	166, 167

TRIAL:		
of prisoners at sessions	... ..	159 60

V.

VAGRANT ACT:		
proceedings under	... ..	63, 68

VERDICT:		
of the jury upon the trial of an indictment	... ..	165

W.

WARRANT:		
when to issue on a charge of an indictable offence	... ..	30
when to issue upon proceedings by way of summary conviction	... ..	68, 69

WARRANT (SEARCH): *see* SEARCH WARRANT.

WITNESS:		
ordering out of court	... ..	35, 76, 160
mode of examining	... ..	35
when called for a prisoner before justices on a charge of an indictable offence	... ..	42
binding over to give evidence	... ..	57
when witness unwilling	... ..	57
committing witness	... ..	58
enforcing attendance of, upon summary convictions	... ..	73
course to be pursued as to examining	... ..	80
examination of, upon the trial of indictments		162

Y.

YEOMANRY CAVALRY:		
as to calling out by justices		133

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1. Hughes's Practice of Sales of Real Property	page 3
2. Hughes's Practice of Mortgages	3
3. Hughes's Concise Precedents in Modern Conveyancing	3
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8. Account Books.....	11
9. Account Books in Insolvency	11

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2. The Practical Statutes of the Session 1851	12
3. The Practical Statutes of the Session 1849	13
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 48. Ditto, ditto, ditto, where a provision is to be made, 1s. each.
 49. Ditto, ditto, ditto, to be made by an attorney, not being a commissioner, taking the acknowledgment, where no provision is made, 1s. each.
 50. Ditto, ditto, ditto, by ditto, where a provision is to be made, 1s. each.
 Copies of each of the above on paper, 1s. per dozen.

2.

Forms for Magistrates' Clerks, &c.

All the Forms prescribed by the Administration of Justice Acts handsomely printed on good blue laid foolscap paper.

N.B.—These forms have been arranged and settled for practical use by W. Foote, Esq., of Swindon, Magistrates' Clerk.

Forms under Common Lodging Houses Act (14 & 15 Vict. c. 28.)

1. Notice to Common Lodging House Keepers.
2. Form of Register.
3. Certificate of Registry.

Forms in Bastardy (7 & 8 Vict. c. 101, and 8 & 9 Vict. c. 10.)*Proceedings before birth.*

1. Application by woman with child.
2. Summons thereon.

Proceedings after birth.

3. Application for a summons by a woman after birth.
4. Summons thereon.
5. Application for a summons by a woman after birth, where the alleged father has paid money within twelve months after birth.
6. Summons thereon.
7. Order when application was made by a woman with child.
8. Order when application was made by a woman after birth.
- 8a. Summons for witness.
- 8b. Warrant to apprehend ditto.
- 8c. Notice of appeal.
9. Recognizance on appeal.
- 9a. Notice of recognizance for the putative father.
- 9b. The like for sureties.
10. Information of mother on disobedience of the order.
11. Warrant of apprehension thereon.
12. Warrant of distress thereon.
13. Recognizance for appearance at the return of the distress warrant.
14. Warrant of commitment.
15. Warrant of commitment in default of distress.
16. Appointment of guardian to a bastard child.

Forms under the 11 & 12 Vict. c. 43.*Summary Convictions and Orders.*

1. A. Summons to the Defendant upon an Information or Complaint.
- 1a. Ditto ditto four on a sheet.
2. B. Warrant where the Summons is disobeyed.
3. C. Warrant in the first instance.
4. D. Warrant of Committal for safe Custody during an Adjournment of the Hearing.
5. E. Recognizance for the Appearance of the Defendant, where the case is adjourned, or not at once proceeded with. Paper and Parchment. Parchment 2s. 6d. per dozen; paper, 6d. per dozen.
- 5a. Notice of such Recognizance, in Books of 50, 1s.; and 100, 1s. 6d.
7. G. 1. Summons of a Witness.
8. G. 2. Warrant where the Witness has not obeyed the Summons.
9. G. 3. Warrant for a Witness in the first instance.
10. G. 4. Commitment of a Witness for refusing to be sworn, or to give Evidence.
11. H. Warrant to remand a Defendant when apprehended.
- 11a. Minute of a Conviction.
12. I. 1. Conviction for a Penalty, to be levied by Distress, and in default of sufficient Distress, Imprisonment. Parchment, per dozen, 4s.; Paper, 2s. per quire.
13. I. 2. Conviction for a Penalty, and in default of Payment, Imprisonment. Parchment, per dozen, 4s.; Paper, 2s. per quire.
14. I. 3. Conviction where the Punishment is by Imprisonment. Parchment, per dozen, 4s.; Paper, 2s. per quire.
- 14a. Minute of an Order.
15. K. 1. Order for Payment of Money, to be levied by Distress, and in default of Distress, Imprisonment.
16. K. 2. Order for Payment of Money, and in default of Payment, Imprisonment.
17. K. 3. Order for any other matter, where the disobeying of it is punishable with Imprisonment.
18. L. Order of Dismissal of an Information or Complaint.
19. M. Certificate of such Dismissal.
20. N. 1. Warrant of Distress upon a Conviction for a Penalty; with Indorsement.
21. N. 2. Warrant of Distress upon an Order for the Payment of Money; with Indorsement.
24. N. 5. Warrant of Commitment for want of Distress.
- 24a. Warrant of Commitment for want of Distress upon Order for Payment of Money.

- 25. O. 1. Warrant of Commitment upon a Conviction for a Penalty in the first instance.
- 26. O. 2. Warrant of Commitment on an Order in the first instance.
- 27. P. 1. Warrant of Commitment on Conviction where Punishment is by Imprisonment.
- 28. P. 2. Warrant of Commitment on an Order, where the disobeying of it is Punishable by Imprisonment.
- 29. P. 3. Warrant of Distress for Costs upon a Conviction, where the Offence is Punishable by Imprisonment; with Indorsement.
- 30. P. 4. Warrant of Distress for Costs upon an Order, where the disobeying of the Order is Punishable by Imprisonment; with Indorsement.
- 31. P. 5. Warrant of Commitment, for want of Distress, in either of the last two cases.
- 31a. Warrant of Commitment for want of Distress for Costs upon an Order.
- 32. Q. 1. Warrant of Distress for Costs upon an Order of Dismissal of an Information or Complaint; with Indorsement.
- 33. Q. 2. Warrant of Commitment for want of Distress in the last case.
- 34. R. Certificate of Clerk of the Peace that the Costs of an Appeal are not paid.
- 35. S. 1. Warrant of Distress for Costs of an Appeal against a Conviction.
- 35a. Warrant of Distress for costs of an Appeal against an Order.
- 36. S. 2. Warrant of Commitment for want of Distress for Costs of an Appeal against a Conviction.
- 36a. Warrant of Commitment for want of Distress for Costs of an Appeal against an Order.
- 37. T. Account of Clerk of the Court of Petty Sessions in loose Sheets.
Ditto, ditto, in books of 1, 2, and 3 quires, with Index.
Ditto, of the Keeper of the Gaol, &c., in loose sheets,
Ditto, in books of 1, 2, and 3 quires, with Index.

Forms under the 11 & 12 Vict. c. 42.

Indictable Offences.

- 38. A. Information and Complaint for an indictable Offence.
- 39. B. Warrant to apprehend a Person charged with an indictable Offence.
- 40. C. Summons to a Person charged with an indictable Offence.
- 41. D. Warrant where the Summons is disobeyed.
- 42. E. Warrant to apprehend a Person charged with an indictable offence committed on the High Seas or Abroad.
- 42a. Instructions for Indictment.
- 43. F. Certificate of Indictment being found.
- 44. G. Warrant to apprehend a Person indicted.
- 45. H. Warrant of Commitment of a Person indicted.
- 46. I. Warrant to detain a Person indicted who is already in Custody for another Offence.
- 48. L. 1. Summons of a Witness.
- 49. L. 2. Warrant where a Witness has not obeyed a Summons.
- 50. L. 3. Warrant for a Witness in the first instance.
- 51. L. 4. Warrant of Commitment of a Witness for refusing to be sworn or to give Evidence.
- 52. M. Depositions of Witnesses; whole sheets and half-sheets.
- 52a. Ruled Foolscap for ditto.
- 53. N. Prisoner's Statement; whole sheets and half-sheets.
- 54. O. 1. Recognizance to Prosecute, with Condition to prosecute in Felony. Paper, 6d. per dozen; Parchment, 2s. 6d. per dozen.
- 54a. Recognizance to give Evidence, with Condition to give Evidence in Felony. Paper, 6d. per dozen; Parchment, 2s. 6d. per dozen.
- 55. O. 2. Notice of the said Recognizance to be given to the Prosecutor for Assizes, in Books of 50, 1s.; and 100, 1s. 6d.
- 55a. The like for Sessions, 1s. 6d. per 100.
- 55b. Notice for Appearance of Witness at Assizes.
- 55c. The like at Sessions, 1s. 6d. per 100.
- 55d. The like at Assizes or Sessions.
- 56. P. 1. Commitment of Witness for refusing to enter into the Recognizance.
- 57. P. 2. Subsequent Order to discharge the Witness.
- 58. Q. 1. Warrant for remanding a Prisoner.
- 59. Q. 2. Recognizance of Bail, instead of Remand, on an Adjournment of an Examination, with Indorsement; Paper, 6d. per dozen; Parchment, 2s. 6d. per dozen.
- 60. Q. 3. Notice of such Recognizance to be given to the Accused and his Sureties, in Books of 50, 1s. and 100, 1s. 6d.
- 61. Q. 4. Notice of such Recognizance to be given to the Sureties; (in books of 50 and 100.)
- 62. R. 1. Warrant to convey the Accused before a Justice of the County, &c., in which the offence was committed.
- 63. R. 2. Order for Payment of the Constable's Expenses.

64. S. 1. Recognizance of Bail, with Condition in ordinary cases. Paper, 6d. per dozen; Parchment, 2s. 6d. per dozen.
 - 64a. Recognizance of Bail, with Condition where the Defendant is entitled to a Traverse. Paper, 6d. per dozen; Parchment, 2s. 6d. per dozen.
 65. S. 2. Notice of the Recognizance to be given to the Accused and his Bail, in Books of 50, 1s. 6d.; and 100, 2s.
 - 65a. Magistrate's Certificate on Commitment for Trial.
 66. S. 4. Certificate of Consent to Bail, by the Committing Justice.
 68. S. 5. Warrant of Deliverance, on Bail being given for a Prisoner already committed.
 69. T. 1. Warrant of Commitment; with Indorsement.
 70. T. 2. Gaoler's Receipt to the Constable for the Prisoner, and Justice's Order thereon for Payment of the Constable's Expenses in executing the Commitment.
 71. Special Commitment for Felony.
 72. Minute of Allowance for Expenses on Trial.
- A MINUTE BOOK for preserving the proceedings in Magistrates' Courts under the above-mentioned Acts, as recommended and used by Mr. FOOTE in the LAW TIMES, contains Index pages, is bound and lettered with the name of the Division. It will be supplied on order only, as the name of the Division is lettered upon it. Price of the medium size, 12s.; for large or small Divisions it may be larger or less, as desired.
- CONVICTION BOOK, for recording of Convictions. Prepared by a Magistrates' Clerk, price according to thickness.
- REGISTER BOOK for Killing Hares, under the Game Act, 11 & 12 Vict. c. 29. Price according to thickness.

Indictments (Parchment only.)

1. Indictment for Larceny, one count, 1s. 3d. per dozen.
2. Ditto, for count with former Conviction, 3s. per dozen.
3. Ditto, for two counts, 3s. per dozen.
4. Ditto, ditto, and count for former conviction, 4s. per dozen.
5. Ditto, where two Prisoners are charged, one with stealing and the other with receiving, 3s. per dozen.
6. Ditto, with a count for receiving, under the New Statute, 3s. per dozen.
7. Ditto, with two counts for stealing, and a count for receiving, under the New Statute, 4s. per dozen.
8. Ditto, a count for former Conviction, on a separate slip, to be attached, when required, 1s. 3d. per dozen.
9. A count for receiving, under the New Statute, to be attached when required, 1s. 3d. per dozen.

Distraining for Poor's Rates (12 Vict. c. 14.)

- A. 1. Complaint of the Overseers against one Rate-payer.
- A. 2. Complaint against several Ratepayers.
- B. Summons upon the Complaint.
- C. 1. Warrant of Distress against one Rate-payer.
- C. 2. Warrant of Distress against several Rate-payers.
- D. Warrant of Commitment in Default of Distress.

Distraining for Highway Rates (12 Vict. c. 14.)

1. Complaint of the Surveyors against one Rate-payer.
2. Complaint of the Surveyors against several Rate-payers.
3. Summons upon the Complaint.
4. Warrant of Distress against one Rate-payer.
5. Warrant of Distress against several Rate-payers.
6. Warrant of Commitment in Default of Distress.

The Form of Return of Highways Expenditure under the Highways Act, 12 & 13 Vict. c. 35.

Forms under the Nuisances Removal and Diseases Prevention Act (11 & 12 Vict. c. 123.)

1. Notice by Householders.
 2. Summons to answer a complaint for Nuisance.
 3. Order for Removal of Nuisances, &c.
 4. Order to permit Execution of Works by Owners.
- Notice by a Committee of a Town Council, &c., to the Owner or Occupier of Premises complained of as being in a filthy and unwholesome condition, that they will enter into and examine the same, under section 1.
- Complaint to a Justice that certain Premises are in a filthy and unwholesome condition, in order to obtain a Summons against the owner or occupier, under section 1.

Alehouse Forms.

1. Ale-house licence.
2. Transfer of Ale-house licence.

Poor Law Parish Officers and General Forms.

By an arrangement with Mr. C. KNIGHT, all the Forms published by him, as sanctioned by the Poor Law Commissioners, are published also at the Law Times Office, and a List will be sent to any applicant.

3.

County Courts Forms.

GENERAL FORMS.—AS SETTLED BY THE JUDGES.

(Price 2s. per quire. Nos. 1 to 37.)

SPECIAL FORMS, &c.

Required by Clerks, and not given in the Rules. Prepared by COUNSEL (Copyright.)

26a. Execution against the goods of plaintiff for costs	2
28a. Execution against an executor on a devastavit	2
30a. Warrant to give possession of tenement on judgment	2
35a. Order of commitment, where defendant appears and is examined at the time of hearing	2
51. Order for time to plaintiff or defendant (section 81.)	4
52. Order for apportionment of costs (section 88.)	4
53. Order of commitment of defendant (section 99.)	2
54. Order for reference to arbitration (section 77.)	2
56. Jury lists, 8s. per quire.	
57. Notice of days for holding courts, 2s. per quire.	
58. Receipts by clerks to parties paying money, 200 in a vol., 6s.	
60. Receipts to clerk by parties receiving sums under 5l., 200 in a vol., 6s.	
61. Order of commitment after examination	2
62. Order of commitment for refusal to be sworn, or to make disclosure	2
78. Warrant of commitment thereupon	2
63. Account for fees in clerk's office, 300 in a vol., 5s.	
64. Account for fees in court, 300 in a vol., 5s.	
65. Order for issuing Summons where defendant resides in another district	2
66. Warrant of execution to accompany execution into another district (sect. 104.)	2
67. The like to accompany warrant of commitment into another district (sect. 104.)	2
68. Cause lists for posting in the courts, &c., 3s. per quire.	
69. List of causes entered, with particulars, as required to be sent by the clerk to the judge previous to each court, 4s. per quire.	
70. Instructions for plaint, in vols., 5s. each, or in quires.	
71. Order for commitment of defendant for not answering to the satisfaction of the judge (section 99.)	2
79. Warrant of commitment thereon (section 99.)	2
72. Affidavit in debt on application for a summons out of the district	2
73. Affidavit on tort, and other causes of action for the like	2
75. Order for time to plaintiff to proceed (section 81.)	4
76. Order for time to defendant (section 81.)	4
77. Warrant of execution in replevin	2
80. Order for commitment for non-payment of instalments	2
82. Notice by clerk to defendant of plaint withdrawn	4
83. Order for costs to defendant, plaintiff not recovering beyond the sum paid into court	2
84. Order on judgment for plaintiff, with apportionment of costs	4
85. The like on judgment for defendant	4
86. Order of commitment for contempt	2
87. Warrant of commitment thereon	2
88. Bond in replevin	1
89. Bond on removal of action in replevin	1
89a. Warrant to replevy	2
90. Bond on issuing execution of warrant of replevin	1
91. Bond on new trial being granted	1
92. Order to set aside an award (section 77.)	4
93. Order for revocation of reference (section 78.)	4
94. Certificate for suspending execution on payment of debt and costs	2
95. Clerk's court memorandum slips, A. to F., price 6d. per dozen.	
98. Form for monthly account to be returned to Treasurer, 3s. per quire.	
100. Certificate of judgment, entry order, 6d. per dozen.	

SPECIAL FORMS.

Required by Clerks, Attorneys, and Sutors, not contained in the Rules.

Prepared by COUNSEL (Copyright.)

39. Particulars of plaintiff's demand (rule 2)	2
40. Particulars of plaintiff's set-off (rule 17)	2
41. Defendant's notice to clerk of set-off (rule 17)	4

42. Defendant's notice to clerk of special defence (rule 19)	4
43. Particulars of plaintiff's claim on interpleader (rule 39)	2
44. Demand of a jury by plaintiff or defendant (rule 20)	4
45. Notice to clerk of application for a new trial (rule 21)	2
46. Notice to the party of application for a new trial (rule 21)	2
47. Notice to clerk by plaintiff of acceptance of debt or damages in satisfaction (rule 16)	4
48. The like to defendant (rule 16)	4
49. Notice to clerk of application to set aside proceedings (rule 21)	4
50. Notice to the party of application to set aside proceedings (rule 21)	4
55. Consent for an order to pay debt and costs	4
74. Notice by plaintiff of plaint withdrawn	4

4.

Forms in Insolvency.

NOTICE.

The forms used under the Insolvent Act can be those only which are printed by Mr. HOBSON, the printer to the Court. But those under the Protection Act are allowed to be published by others. An arrangement has been made with Mr. HOBSON by the Publisher of the *Law Times*, by which the latter is enabled to supply Mr. HOBSON'S Official Forms at the same prices, together with the Protection Forms published by himself; thus enabling the Officers and Practitioners to supply themselves with entire series by one order and one parcel from the publisher of the *County Courts Chronicle*.

For List of Forms used by the OFFICERS of the County Courts, under the 1 & 2 Vict. c. 110, and 10 & 11 Vict. c. 106, see page 20.

9. Order for hearing, with indorse, 6s. per 100.
46. Adjourned hearing, with indorse, 6s. per 100.
23. Gaoler's warrant to produce prisoners, 6s. per 100.
24. Subpœna *ad test.*, parchment, 6s. per 100.
25. Subpœna *duces tecum*, parchment, 10s. per 100.
36. Warrant of attorney, 6s. per 100.
27. Order of adjudication, discharge forthwith, 3s. per 100.
28. Ditto, ditto (section 76), future period, 6s. per 100.
29. Order of adjudication (section 76), forthwith and future period, 6s. per 100.
30. Ditto (section 77), 6s. per 100.
31. Ditto (section 78), 6s. per 100.
32. Gaoler's warrant forthwith, 6s. per 100.
33. Gaoler's warrant, future period, 6s. per 100.
34. Ditto, forthwith and future period, 6s. per 100.
35. Ditto, forthwith, special, for many prisoners, ruled, 10s. per 100.
36. Order for costs to opposing creditors (section 77), 6s. per 100.
37. Ditto, in other cases, 6s. per 100.
38. Minutes of Instructions on costs given at the hearing, 3s. per 100.
42. Acceptance paper, given to a party named assignee, 3s. per 100.
43. Order to bring up a prisoner as witness, 6s. per 100.
44. Order of reference to examiner, 6s. per 100.
45. Order of commitment for contempt, 6s. per 100.
47. Calendar sheet, ruled, 3d. each; 20s. per 100.
49. Gazette Advertisement of hearing, 6s. per 100.
39. Order on assignee, expense of conveying prisoner to town, 6s. per 100.
40. Ditto, on treasurer of county for one prisoner, 6s. per 100.
41. Ditto, for many, 6s. per 100.

FORMS IN SURETY.

52. Commission to authorize the taking of sureties, 6d. each.
15. Recognizance of two sureties, double, 3d. each.
54. Recognizance, single surety, 3d. each.
48. Order of discharge on surety, 6s. per 100.
16. Gaoler's warrant for ditto, 6s. per 100.

FORMS USED BY THE MESSENGERS.

- 9a. Order for hearing, to serve, 6s. per 100.
14. Affidavit of service of notice of sureties, 3s. per 100.
17. Affidavit of service of order for hearing, 3s. per 100.
- 17a. Affidavit of service of order for hearing, many creditors, 6s. per 100.
- 17b. Ditto of ditto, on attorney or agent, 3s. per 100.
- 17a. Affidavit of service of order for hearing, by post, 3s. per 100.
- 17b. Ditto of ditto, many creditors, 6s. per 100.
- 17b. Ditto, of notice of sureties, by post, 3s. per 100.
- Creditor's consent to hearing, where service defective, 6s. per 100.

List of Forms required by PRACTITIONERS in Insolvency, under 1 & 2 Vict. c. 110, and 10 & 11 Vict. c. 102, as used in the Court for Relief of Insolvent Debtors, and adapted to use in the County Courts.

101. Notice to gaoler, 3s. per 100.
102. Retainer, 3s. per 100.
3. Petition, parchment, 4d. each; paper, 8s. per 100.
5. Schedule, parchment, 1s. 4d. each; paper, 4d. each.
Extra sheets for creditors, parchment, 8d. each; paper, 2d. each.
Extra sheets for debtors, parchment, 8d. each; paper, 2d. each.
Extra special balance sheets, parchment, 8d. each; paper, 2d. each.
6. General balance sheet, 8s. per 100.
7. Estate papers, 6s. per 100.
8. Broker's inventory, 6s. per 100.
103. Affidavit of signature, 6s. per 100.
- 9a. Order for hearing, 6s. per 100.
- 46a. Ditto, for adjourned hearing, 6s. per 100.
119. List for the messengers, 6s. per 100.
Ditto, many creditors, 12s. per 100.

FOR DIVIDEND.

117. Affidavit of debt, 6s. per 100.
118. Dividend receipt list, parchment, 1s. each.
120. Insolvent's release, with affidavit, 12s. per 100; 2d. each.
106. Bills of costs, 12s. per 100.
109. Ditto, with costs of surety, 12s. per 100.
110. Special petition to file petition, 12s. per 100.
111. Special petition to file schedule, 12s. per 100.
112. Power of attorney to vote in the choice of assignees, 12s. per 100.
113. Creditor's nomination of assignees, 12s. per 100.
114. Assignees' account and affidavit (recently settled by the auditors of the court), 12s. per 100.
24. Subpoena, copies, 2s. per 100.
25. Ditto, *duces tecum*, copies, 3s. per 100.
115. Undertaking not to bring action, 6s. per 100.
4. Creditor's petition and affidavit, parchment, 6d. each; paper, 12s. per 100.

FORMS IN SURETY.

13. Notice of sureties in person, 10s. per 100.
12. Affidavit of ditto, 10s. per 100.
51. Notice of sureties, not in person, 10s. per 100.
121. Affidavit, with recognizance annexed, 6s. per 100.
123. Judgment lists, 6s. per 100.
124. Authority for sale.

Protection Cases.

List of Forms used by the OFFICERS of COUNTY COURTS in PROTECTION CASES, under 5 & 6 Vict. c. 116, 7 & 8 Vict. c. 96, and 10 & 11 Vict. c. 102.

(Published by JOHN CROCKFORD.)

171. Interim order, 6s. per 100.
172. Appointment of official assignee, 6s. per 100.
173. Warrant to bring up prisoner, 6s. per 100.
174. Return to notice for appraisement, 10s. per 100.
175. Order discharging prisoner (section 6), 6s. per 100.
176. Affidavit of service of notice on creditors, long form, 6s. per 100.
177. Certificate of appointment of assignees, confirmed by judge, 6s. per 100.
178. Final order, 6s. per 100.
179. Final order, adjourned, *sine die*, 6s. per 100.
180. Order for protection from process (section 28), 6s. per 100.
181. Order discharging petitioner (section 29), 6s. per 100.
182. Warrant of seizure, 10s. per 100.
183. Gazette advertisement for final order, 4 on a sheet, 6s. per 100.
184. Witnesses summons, 6s. per 100.
185. First examination, 6s. per 100.
186. Adjourned ditto, 6s. per 100.
187. Order of remand, 6s. per 100.
188. Examination on final order, 6s. per 100.
189. Order dismissing petition, 6s. per 100.
190. Order for sale, 6s. per 100.
191. Official assignees' first application for debt, 4s. per 100.
192. Second ditto, 4s. per 100.
193. Advertisements for further hearing (section 28), 6s. per 100.
194. Order of discharge (section 23), 6s. per 100.
195. Rule on detaining creditor to show cause against interim order, 6s. per 100.

196. Monthly return to Lord Chancellor, 12s. per 100.
197. Notice of audit, and proof of debt, 6s. per 100.
198. Declaration of dividend and receipt, 3s. per 100.
199. Authority to receive dividend, 3s. per 100.
200. Account of official assignee, 10s. per 100.

List of Forms required by PRACTITIONERS in Insolvency PROTECTION CASES in the COUNTY COURTS, under 5 & 6 Vict. c. 116, 7 & 8 Vict. c. 96, and 10 & 11 Vict. c. 102.

150. Petitions, parchment, 4d. each; paper, 8s. per 100.
151. Schedules, parchment, 1s. 4d. each; paper, 4d. each.
Extra sheets of creditors, parchment, 8d. each; paper, 2d. each.
Extra sheets of debtors, parchment, 8d. each; paper, 2d. each.
Extra special balance sheets, parchment, 8d. each; paper, 8d. each.
152. General balance sheets, 8s. per 100.
153. Estate papers, with notice to brokers, 6s. per 100.
154. Affidavit verifying petition, &c., 6s. per 100.
155. Notice of intention of prisoner having petitioned to apply for interim order and discharge from custody, 6s. per 100.
156. Notice to creditors and for Gazette of first examination, 4s. per 100, without fly-leaf; or 5s. per 100 with fly-leaf.
157. Notice of petitioner's intention to make application for orders of protection and discharge (sections 28 and 29), 6s. per 100.
158. Choice of assignees, 8s. per 100.
159. Bills of costs, 12s. per 100.
160. Short list for messengers, 6s. per 100.
Long ditto, ditto, 12s. per 100.

RULES AND ORDERS IN PRISONERS' AND PROTECTION CASES,
With several orders not before printed; also regulations of the Office, and of the Brokers and the Messengers; and the List of Fees, in 8vo., price 1s. 6d.

5.

Registration and Election Forms.

Books and Forms for Committees and Agents of Candidates.

1. Canvass Books, strongly bound (counties and boroughs.)
2. Committee Register Books (counties and boroughs), large size for central committees, smaller for district committees.
3. Return of Day's Canvass by district committee (counties and boroughs); in quires.
4. Inspector's Poll Books (counties and boroughs.)
5. District Committee's Polls Return Books (counties and boroughs.)
6. Central Committee's Polls Return Books (counties and boroughs.)
7. Check Clerks' Books (counties and boroughs.)
8. List of Out-Voters (counties and boroughs); in quires.
9. Committee Memorandum Books, with patent locks, if so ordered.
10. Committee Account Books, with patent locks, if so ordered.
11. Notice to returning officer of appointment of agent, to prevent personation; in quires.
12. Demand of Bribery Oath; in quires.

For Returning Officers.

13. Poll Books (counties and boroughs.)
14. Poll Clerks' Oath for counties; in quires.
15. Poll Clerks' Oath, for cities and boroughs; in quires.
16. Instructions to Poll Clerks; in quires.
17. Questions and Oath of Identity (with memorandum for Poll Clerk and Returning Officer); in quires.
18. Bribery Oath (with like memorandum); in quires.
19. Returning Officer's Oath, on parchment.
20. Return of members in a city or borough, on parchment.
21. Return of members in a county, on parchment.

N.B.—The above books and forms are *copyright*.

The name of the county, city, or borough will be printed in the forms without additional charge, if not less than a week's notice be given.

Orders should state as nearly as possible the number of electors in the place for which the above books and forms are required, that the size of the books may be proportioned accordingly; and they should be sent at the earliest period to prevent disappointment in the supply, which will be unavoidable if great quantities be required at the latest moment.

Instructions to agents, committees, and returning officers, for the management of an election in a county, city, or borough, with precedents of the books, forms, oaths, returns, &c., and the last Bribery and Treating Act, being the Addenda to Cox's Practice of Registration and Elections. Price 2s. 6d. sewn.

6.

Common Law Forms.**Practical Forms for Officers, as settled by Counsel.****I. COMMON LAW FORMS.**

1. Copy writ of summons, 4d. per dozen; parchment, 9d. per dozen.
2. Copy Subpoena *ad test*, 4d. per dozen; parchment, 9d. per dozen.
- 2a. Copy Subpoena before sheriff, 4d. per dozen; parchment, 9d. per dozen.
3. Copy subpoena *duces tecum* "before the sheriff," 9d. per dozen; parchment, 1s. 6d. per dozen.
4. Notice to quit where tenancy uncertain, 9d. per dozen.
- 4a. Notice to quit where tenancy certain, 9d. per dozen.
5. Letter for payment of debt, with interest, 1s. per dozen; without interest, 1s. per dozen.
6. Affidavit of service of writ, 9d. per dozen.
7. Warrant of distress, 9d. per dozen.
8. Notice and inventory of distress, 9d. per dozen.
9. Notice of declaration, without particulars, 4d. to 9d. per dozen.
10. Copy subpoena *duces tecum* for the assizes, 9d. per dozen; parchment, 1s. 6d. per dozen.
11. Declaration in debt under 20*l.*, 1s. per dozen.
12. Declaration in debt. account stated, 1s. 6d. per quire.
13. Declaration on promises for goods sold, 1s. 6d. per quire.
14. Notice of declaration, foolscap half-sheets, with particulars, 1s. per dozen; 4to with fly-leaf, 1s. per dozen; without particulars, 9d. per dozen.
15. Notice to inspect and admit, foolscap, 9d. per dozen.
16. Notice of execution of writs of inquiry, 6d. per dozen.
17. Notice to produce documents, 9d. per dozen.
18. Notice to inspect and admit, 4to, for the country, 9d. per dozen.
19. Notice of particulars of demand, 9d. per dozen.
20. Declaration in ejectment, single demise, 1s. per dozen.
21. Ditto, double demise, 1s. per dozen.
22. Affidavit of service and attendance on summons, 9d. per dozen.
23. Affidavit of service and attendance on summonses, 9d. per dozen.
24. Bill of costs, on judgment by default, 1s. 6d. per dozen.
25. Cognovit for payment of debt, 2s. per dozen.
26. Ditto, by instalments, 2s. per dozen.
27. Warrant of attorney to confess judgment, 2s. per dozen.
28. Declaration in lieu of oaths, with fly-leaf, 2s. per dozen, or 3s. 6d. per quire ditto, without fly-leaf, 1s. 6d. per dozen, or 2s. 6d. per quire. Precipes, 3d. per dozen.
29. Declaration in assumpsit under 20*l.*, 1s. per dozen.
30. Consent to judge's order, 1s. 6d. per dozen.
Appearance pieces, on parchment, 1s. 6d. per dozen.

II. MISCELLANEOUS.

31. General retainer, 1s. per dozen.
32. Warrant to sue, 6d. per dozen.
N.B.—These may be had half-bound in volumes, each containing 150 forms, at 15s. for the volume of general retainers, and 7s. 6d. for the volume of warrants to sue.
70. Notice of intention to distrain for arrears of tithe rent-charge, 2s. per quire.
- 70a. Notice by agent of intention to distrain for ditto, 2s. per quire.
71. Warrant of distress for same, 2s. per quire.
80. Agreements for sale and purchase of shares in joint-stock companies, 2s. per quire.

